1W-67

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1285~~ 884

THOMAS BALDWIN, PLAINTIFF IN ERROR,

vs.

J. C. FRANKS, MARSHAL OF THE UNITED STATES OF AMERICA, FOR THE DISTRICT OF CALIFORNIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF CALIFORNIA.

FILED Apl 14th 1886.

SUPREME COURT OF THE UNITED STATES.

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VS.

J. C. FRANKS, MARSHAL OF THE UNITED STATES OF AMERICA, FOR THE DISTRICT OF CALIFORNIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF CALIFORNIA.

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In the Circuit Court of the United States, Ninth Circuit and District of California.

IN THE MATTER OF THE APPLICATION OF THOMAS BALDWIN FOR A WRIT OF HABEAS CORPUS.

To the Honorable Lorenzo Sawyer, Judge of the Circuit Court of the Ninth Circuit and District of California:

1 The petitioner, Thomas Baldwin, of the State of California, complaining, shows to the Court that he is unjustly and unlawfully detained, imprisoned and restrained of his liberty by J. C. Franks, the United States Marshal for the District of California, in the County Jail of the County of Sacramento, at the City of Sacramento, in the county and State aforesaid.

That the said imprisonment, detention, confinement and restraint are illegal; and that the illegality thereof consists in this, to-wit:

2 That your said petitioner was arrested and is now held by virtue of a warrant issued by B. N. Bugby, Commissioner of the said Circuit Court of the United States, upon a complaint charging him with the crime of conspiracy, of which said complaint the following is a true and correct copy, to-wit:

UNITED STATES OF AMERICA, District of California. } ss.

Be it remembered, that on this 8th day of March, A. D. 1886, before me, B. N. Bugbey, a Commissioner duly appointed by the Circuit Court of the United States of America for the District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in the said causes depending in the Courts of the said United States, pursuant to the Acts of Congress, in that behalf personally appeared John Sing, who was by me duly sworn according to law, and he deposes and says that the crime of conspiracy was committed by more than two persons, who conspired

3 together for the purpose of depriving a class of persons, then being subjects of the Emperor of China, to-wit, Chinese aliens belonging to said class, of the equal protection of the laws, and of equal privileges and immunities under the laws; that is to say: That heretofore, to-wit, on or about the 17th day of February, A. D. 1886, within the jurisdiction of the United States aforesaid, and of this Honorable Court, to-wit, at the town of Nicolaus, in the County of Sutter, in the State of California, Charles Wessing, Edward Wessing, H. Wessing, Thomas Thornton, Alfred Wagner, Mathew Mutchler, David Redfield, Daniel McCarty, George Scott, Charles Engasser, Frank Valley, and one Elliot, whose Christian name is unknown to affiant, and Thomas Baldwin, Bird Wilson, William Hays, and one McElroy, whose Christian name is unknown, and divers other persons to said affiant unknown, did conspire together for the purpose of depriving the following persons, to-wit, Sing Lee, John Lee, Hee Look, Lun Mow, Chung Hung, Chun Gong, Lee

Yung, Gim Nun, Len Woom, Lum Gunng, Luey Luey, You
4 Mouy, Fung Fat, Yuch Yow, Hen Ain, and Fuey Hang, belonging to said class of Chinese aliens, being then and there subjects of the Emperor of China, of the equal protection of the laws and of equal privileges and immunities under the laws, for that said last named persons so belonging to the class of Chinese aliens did then and there reside at the town of Nicolaus, in said County of Sutter, in said State of California, and were engaged in legitimate business and labor to earn a living, as they had a right to do, and they at that time had a right to reside at said town of Nicolaus, in said County of Sutter, in said State of California, and engage in legitimate business and labor to earn a living, under and by virtue of the treaties existing, and which did then exist, between the Government of the United States and the Emperor of China, and the Constitution and laws of the United States; but, nevertheless, while said last named persons were then and there so residing and
5 pursuing their legitimate business and labor for the purpose aforesaid, said conspirators, to-wit, Charles Wessing, Edward Wessing, H. Wessing, Thomas Thornton, Alfred Wagner, Mathew Mutchler, David Redfield, Daniel McCarty, George Scott, Charles Engasser, Frank Valley, and one Elliot, whose Christian name is unknown to affiant, and Thomas Baldwin, Bird Wilson, William Hays, and one McElroy, whose Christian name is unknown, and divers other persons to said affiant unknown, did then and there, having conspired together, for purpose, unlawfully and with force and arms violently, and with intimidation, drive and expel said persons hereinbefore named, belonging to said class of Chinese and being subjects of the Emperor, from their residence at said town of Nicolaus, in said County of Sutter and State of California, and did then and there deprive them, said Chinese aliens, who were then and there subjects of the Emperor of China, of the privilege of
6 conducting their legitimate business and of the privilege of laboring to earn a living, and without any legal process the defendants placed said Chinese aliens, the subjects of the Emperor of China, under unlawful restraint and arrest, and so detained them for several hours, and then and there by force and arms, and with violence and intimidation, placed them, said Chinese aliens, the subjects of the Emperor of China, upon a steamboat barge, then plying on the Feather river, and drove them from their residence and labor and from said county, whereby said defendants, said conspirators, deprived said Chinese aliens, the subjects of the Emperor of China, of the equal protection of the laws and of equal privileges and immunities under the laws, contrary to the form of the statutes of the United States of America in such cases made and provided, and against the peace and dignity of the United States.

7. His
JOHN ⋈ SING.
Mark.

Sworn and subscribed to before me, this 8th day of March, A. D. 1886.

[SEAL.] B. N. BUGBY,
Commissioner of the Circuit Court of the United States for the District of California.

Witness to the mark of John Sing, CHARLEY CHUNG.

That upon said complaint and warrant your said affiant has been held for examination, and committed to the custody of said J. C. Franks, as such United States Marshal, and that he is now in actual confinement in the said County Jail, at said City of Sacramento.

And your petitioner claims and avers that the said Commissioner of the said Circuit Court had no jurisdiction or authority to issue the said warrant, or to commit your said petitioner to the custody of the said United States Marshal, for the said offense alleged in the said complaint, nor has the said Marshal any warrant or au-

8 thority of law to confine your said petitioner or restrain him of his liberty, as aforesaid; that the offense in the said complaint, and for which the said warrant was issued, and for which your said petitioner is now being held in confinement, is one purely of State jurisdiction, and over which the Government of the United States and its tribunals have no jurisdiction whatsoever. That your petitioner is a citizen of the United States and of the State of California, and that said offense is alleged to have been committed in the County of Sutter and within the jurisdiction of said State;

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of habeas corpus, to be directed to the said J. C. Franks, may issue in this behalf, so that your petitioner may be forthwith brought before this Court to do, submit to, and receive what the law may require.

9

UNITED STATES OF AMERICA, } ss.
District of California. }

Thomas Baldwin, being duly sworn, deposes and says: That he is the petitioner named in the foregoing potition subscribed by him; that he has read the same and knows the contents thereof, and that the statements therein made are true, as he verily believes.

THOMAS BALDWIN.

Subscribed and sworn to before me, this 15th day of March, 1886.

[SEAL.] B. N. BUGBEY,
U. S. Commissioner in and for the District of California.

Endorsed:

Let the writ issue in pursuance of the prayer of this petition, returnable forthwith.

(Signed,) LORENZO SAWYER,
Circuit Judge,

Filed, March 16, 1886.

L. S. B. SAWYER, *Clerk.*

10

In the Circuit Court of the United States, District of California.

IN THE MATTER OF THOMAS BALDWIN, } No. 3989.
on Habeas Corpus. }

The President of the United States of America, to J. C. Franks, United States Marshal for the District of California, greeting:

You are hereby commanded that you have the body of Thomas Baldwin, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Thomas Baldwin shall be called or charged, before the Honorable Lorenzo Sawyer, Judge of the Circuit Court of the United States, for the District of California, at the Court-room of said Court, in the City and County of San Francisco, California, forthwith, to do and receive what shall then and there be con-
11 sidered, concerning the said Thomas Baldwin. And have you then and there this writ.

Witness, The Hon. MORRISON R. WAITE,
Chief Justice of the Supreme Court of the United States,
this 16th day of March, A. D. 1886.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON, *Deputy Clerk.*

I, L. S. B. Sawyer, Clerk of the Circuit Court of the United States for the District of California, do hereby certify the foregoing to be a copy of the writ of habeas corpus issued in the within entitled matter.

Attest my hand and seal of said Circuit Court, this 16th day of March, A. D. 1886.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON, *Deputy Clerk.*

Service of the original writ, of which the within is a certified copy, is hereby acknowledged, this 16th day of March, 1886.

J. C. FRANKS, *U. S. Marshal.*

Endorsed:

Filed, on return, this 18th day of March, 1886.
12 L. S. B. SAWYER, *Clerk.*

UNITED STATES MARSHAL'S OFFICE,
District of California.

In obedience to the within writ of habeas corpus, I, J. C. Franks, United States Marshal for the District of California, have here, and present here in Court, the body of the within named Thomas Baldwin, by me held as a prisoner, under a warrant issued for the said Thomas Baldwin, under the name of Frank Baldwin, by B. N. Bugby, Commissioner of the Circuit Court of the United States for the District of California, and to me addressed, directing me as Marshal, as aforesaid, to receive the said Thomas Baldwin, designated in said warrant as Frank Baldwin, into my custody as Marshal, as aforesaid, and to hold him until discharged by due process of law, which said warrant of commitment is hereto attached and made part of this return, and which said warrant was issued upon the
13 written and same complaint which is set forth in the petition of said Thomas Baldwin for the issuance of said writ of habeas corpus, and which said complaint is hereby referred to and made part of this return. That said Thomas Baldwin has been held

by me as Marshal, as aforesaid, and not otherwise, since the 13th day of March, 1886, under said warrant of commitment; and said Thomas Baldwin has never been ordered discharged from custody by any competent authority.

J. C. FRANKS, *U. S. Marshal.*

San Francisco, March 18th, 1886.

14 UNITED STATES OF AMERICA, District of California, City of Sacramento. } ss.

The President of the United States, to the United States Marshal for the District of California, and to his Deputies or any or either of them, greeting:

Whereas, Frank Baldwin has been arrested upon the oath of John Sing for having, on or about the 17th day of February, A. D. 1886, at the town of Nicolaus, County of Sutter, State of California, in the district aforesaid, committed the crime of conspiracy, and has not been examined by me, B. N. Bugby, a Commissioner of the Circuit Court of the United States for said District of California, upon the aforesaid charge, and has been required to give bail in the sum of one thousand dollars for his appearance before me on the 15th day of March, 1886, at 1 o'clock P. M. of said day, for examination, which requisition he has failed to comply with said order.

These are, therefore, to command you, in the name and by the authority aforesaid, to receive the said Frank Baldwin into
15 your custody, and safely keep the said Frank Baldwin to await further examination.

Given under my hand and official seal, in the city and district aforesaid,

B. N. BUGBEY, [SEAL.]
Commissioner of the Circuit Court of the United States for the District of California.

In the Circuit Court of the United States District of California.

IN THE MATTER OF THOMAS BALDWIN, on Habeas Corpus. } No. 3989.

The President of the United States of America, to J. C. Franks, United States Marshal for the District of California, greet-
16 ing:

You are hereby commanded, that you have the body of Thomas Baldwin, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Thomas Baldwin shall be called or charged, before the Honorable Lorenzo Sawyer, Judge of the Circuit Court of the United States, for the District of California, at the Court-room of said Court, in the City and County of San Francisco, California, forthwith to do and receive what shall then and there be

considered, concerning the said Thomas Baldwin, and have you then and there this writ.

Witness, the Hon. MORRISON R. WAITE,
Chief Justice of the Supreme Court of the United States,
this 16th day of March, A. D. 1886.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON, *Deputy Clerk.*

Endorsed:
Filed on return, this 18th day March, 1886.
L. S. B. SAWYER, *Clerk.*

In the Circuit Court of the United States, District of California.

IN THE MATTER OF THOMAS BALDWIN, on Habeas Corpus. } No. 3989.

This matter having been regularly brought on for hearing
17 before the Court and the Judges thereof, upon the issue joined herein, and the same having been duly heard and submitted, and due consideration therein had, and there being an opposition of opinion, and judgment having been ordered in pursuance of the opinion of the presiding Judge: it is, by the Court and the Judges, in pursuance of the opinion of the presiding Judge thereof, now here ordered and adjudged: That Thomas Baldwin, in whose behalf the writ of habeas corpus herein was sued out, was not, at the date of said petition, illegally restrained of his liberty, as alleged therein.

It is therefore ordered. that he be remanded to the Mar-
18 shal—the custody from which he has been taken—and that the writ be discharged.

Entered this 31st day of March, 1886.
L. S. B. SAWYER, *Clerk.*

DISTRICT OF CALIFORNIA—*ss.*

I hereby certify that the foregoing is a full, true and correct copy of an original order and judgment made and entered in the therein entitled matter.

Witness my hand and the seal of said Circuit Court, this 31st March, A. D. 1886.

[SEAL.] L. S. B. SAWYER, *Clerk.*

Endorsed:
Filed, March 31st, 1886.
L. S. B. SAWYER, *Clerk.*

United States of America—Circuit Court of the United States, Ninth Circuit, District of California.

IN THE MATTER OF THOMAS BALDWIN, on Habeas Corpus. } No. 3989.

I, Lorenzo S. B. Sawyer, Clerk of the Circuit Court of
19 the United States, of the Ninth Judicial Circuit, within and for the District of California, do hereby certify that the fore-

going papers hereto annexed constitute the judgment roll in the therein entitled matter.

Witness my hand and the seal of said Circuit Court, this 31st day of March, A. D. 1886.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON, *Deputy Clerk.*

Endorsed:

Judgment Roll. Filed March 31st, 1886.

L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON, *Deputy Clerk.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

In re THOMAS BALDWIN, on Habeas Corpus. } Certificate of Division of Opinion.

20 This case was heard, on the petition for a writ of habeas corpus; the writ of habeas corpus issued thereon, and the return of the Marshal made to said writ; the facts stated in said petition and return being taken as true for the purposes of the hearing:

The said petition, writ and return are hereby ordered to be incorporated in, and made a part of this certificate of division, and of the record in this case, and are in the words and figures following, to-wit:

In the Circuit Court of the United States, Ninth Circuit and District of California.

IN THE MATTER OF THE APPLICATION OF THOMAS BALDWIN, for a Writ of Habeas Corpus. }

To the Honorable Lorenzo Sawyer, Judge of the Circuit Court of the Ninth Circuit and District of California:

The petitioner, Thomas Baldwin, of the State of Califor-
21 nia, complaining, shows to the Court, that he is unjustly and unlawfully detained, imprisoned and restrained of his liberty by J. C. Franks, the United States Marshal for the District of California, in the County Jail of the County of Sacramento, at the City of Sacramento, in the county and State aforesaid.

That the said imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consists in this, to-wit: that your said petitioner was arrested and is now held by virtue of a warrant issued by B. N. Bugby, Commissioner of the said Circuit Court of the United States, upon a complaint charging him
22 with the crime of conspiracy, of which said complaint the following is a true and correct copy, to-wit:

UNITED STATES OF AMERICA, District of California. } ss.

Be it remembered, that on this 8th day of March, A. D. 1886, before me, B. N. Bugby, a Commissioner duly appointed by the Circuit Court of the United States of America for the District of California, to take acknowledgments of bail and affidavits; and also to take depositions of witnesses in the said causes depending in the Courts of the said United States, pursuant to the Acts of Congress in that behalf, personally appeared John Sing, who was by me duly sworn according to law, and he deposes and says: That the crime of conspiracy was committed by more than two persons, who conspired together, for the purpose of depriving a class of persons then being subjects of the Emperor of China, to-wit, Chinese aliens, belonging to said class, of the equal protection of the laws, and of equal
23 privileges and immunities under the laws, that is to say: that heretofore, to-wit, on or about the 17th day of February, A. D. 1886, within the jurisdiction of the United States aforesaid, and of this Honorable Court, to-wit, at the town of Nicolaus, in the County of Sutter, in the State of California, Charles Wessing, Edward Wessing, H. Wessing, Thomas Thornton, Alfred Wagner, Mathew Mutchler, David Redfield, Daniel McCarty, George Scott, Charles Engasser, Frank Valley, and one Elliot, whose Christian name is unknown to affiant, and Thomas Baldwin, Bird Wilson, William Hays, and one McElroy, whose Christian name is unknown, and divers other persons, to said affiant unknown, did conspire together for the purpose of depriving the following persons, to-wit: Sing Lee, John Lee, Hee Look, Lun Mow, Ching Hung, Chun Gong, Lee Yung, Gim Nun, Len Woon, Lum Gunng, Luey Luey, You Mouy, Fung Fat, Yuch Yow, Hen Ain, and Fuey Hang, belonging to said class of Chinese aliens, being then and there subjects of the
24 Emperor of China, of the equal protection of the laws, and of equal privileges and immunities under the laws, for that said last named persons, so belonging to the class of Chinese aliens, did then and there reside, at the town of Nicolaus, in said County of Sutter, in said State of California, and were engaged in legitimate business and labor to earn a living, as they had a right to do; and they at that time had a right to reside at said town of Nicolaus, in said County of Sutter, in said State of California, and engage in legitimate business and labor to earn a living, under and by virtue of the treaties existing, and which did then exist, between the Government of the United States and the Emperor of China, and the Constitution and laws of the United States; but nevertheless, while said last named persons were then and there so residing and pursuing their legitimate business and labor, for the purpose aforesaid, said conspirators, to-wit, Charles Wessing, Edward Wessing,
25 H. Wessing, Thomas Thornton, Alfred Wagner, Mathew Mutchler, David Redfield, Daniel McCarty, George Scott, Charles Engasser, Frank Valley, and one Elliot, whose Christian name is unknown to affiant, and Thomas Baldwin, Bird Wilson, William Hays, and one McElroy, whose Christian name is unknown, and divers other persons to said affiant unknown, did then and there,

having conspired together for purpose unlawfully, and with force and arms, violently and with intimidation drive and expel said persons, hereinbefore named, belonging to said class of Chinese and being subjects of the Emperor, from their residence at said town of Nicolaus, in said County of Sutter and State of California, and did then and there, deprive them, said Chinese aliens, who were then subjects of the Emperor of China, of the privilege of
26 conducting their legitimate business and of the privilege of laboring to earn a living, and without any legal process, the defendants placed said Chinese aliens, the subjects of the Emperor of China, under unlawful restraint and arrest, and so detained them for several hours, and then and there by force and arms, and with violence and intimidation, placed them, said Chinese aliens, the subjects of the Emperor of China, upon a steamboat barge, then plying on the Feather river, and drove them from their residence and labor, and from said county, whereby said defendants, said conspirators, deprived said Chinese aliens, the subjects of the Emperor of China, of the equal protection of the laws, and of equal privileges and immunities under the laws, contrary to the form of the statutes of the United States of America in such cases made and provided, and against the peace and dignity of the United States.

His
JOHN ✕ SING.
Mark.

Sworn and subscribed to before me, this 8th day of March, A. D. 1886.

[SEAL.] B. N. BUGBY,

Commissioner of the Circuit Court of the United States
27 *for the District of California.*

Witness to the mark of John Sing, CHARLEY CHUNG.

That upon said complaint and warrant your said affiant has been held for examination, and committed to the custody of said J. C. Franks, as such United States Marshal, and that he is now in actual confinement in the said County Jail, at said City of Sacramento.

And your petitioner claims and avers that the said Commissioner of the said Circuit Court had no jurisdiction or authority to issue the said warrant, or to commit your said petitioner to the custody of the said United States Marshal, for the said offense alleged in the said complaint, nor has the said Marshal any warrant or au-
28 thority of law to confine your said petitioner or restrain him of his liberty, as aforesaid; that the offense charged in the said complaint, and for which the said warrant was issued, and for which your said petitioner is now being held in confinement, is one purely of State jurisdiction, and over which the Government of the United States and its tribunals have no jurisdiction whatsoever. That your petitioner is a citizen of the United States and of the State of California, and that said offense is alleged to have been committed in the County of Sutter and within the jurisdiction of said State;

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of habeas corpus, to

be directed to the said J. C. Franks, may issue in this behalf, so that your petitioner may be forthwith brought before this Court to do, submit to, and receive what the law may require.

29 UNITED STATES OF AMERICA, } ss.
District of California. }

Thomas Baldwin, being duly sworn, deposes and says: That he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and that the statements therein made are true, as he verily believes.

THOMAS BALDWIN.

Subscribed and sworn to before me, this 15th day of March, 1886.

[SEAL.] B. N. BUGBY,
U. S. Commissioner in and for the District of California.

Endorsed on said petition:

Let the writ issue in pursuance of the prayer of this petition, returnable forthwith.

(Signed,) LORENZO SAWYER,
Circuit Judge,

Filed March 16, 1886.

L. S. B. SAWYER, *Clerk.*

30

In the Circuit Court of the United States, District of California.

IN THE MATTER OF THOMAS BALDWIN, on Habeas Corpus. } No. 3989.

The President of the United States of America, to J. C. Franks, United States Marshal for the District of California, greeting:

You are hereby commanded that you have the body of Thomas Baldwin, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Thomas Baldwin shall be called or charged, before the Honorable Lorenzo Sawyer, Judge of the Circuit Court of the United States, for the District of California, at the Court-room of said Court, in the City and County of San Francisco, California, forthwith, to do and receive what shall then and there be considered, concerning the said Thomas Baldwin. And have you then
31 and there this writ.

Witness, The Hon. MORRISON R. WAITE,
Chief Justice of the Supreme Court of the United States,
this 16th day of March, A. D. 1886.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON, *Deputy Clerk.*

I, L. S. B. Sawyer, Clerk of the Circuit Court of the United States for the District of California, do hereby certify the foregoing to be a copy of the writ of habeas corpus issued in the within entitled matter.

Attest my hand and seal of said Circuit Court, this 16th day of March, A. D. 1886.

[SEAL.]

L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON, *Deputy Clerk.*

Service of the original writ, of which the within is a certified copy, is hereby acknowledged, this 16th day of March, 1886.

J. C. FRANKS, *U. S. Marshal.*

Endorsed:

Filed, on return, this 18th day of March, 1886.

32 L. S. B. SAWYER, *Clerk.*

UNITED STATES MARSHAL'S OFFICE,
District of California.

In obedience to the within writ of habeas corpus, I, J. C. Franks, United States Marshal for the District of California, have here, and present here in Court, the body of the within named Thomas Baldwin, by me held as a prisoner, under a warrant issued for the said Thomas Baldwin, under the name of Frank Baldwin, by B. N. Bugby, Commissioner of the Circuit Court of the United States for the District of California, and to me addressed, directing me as Marshal, as aforesaid, to receive the said Thomas Baldwin, designated in said warrant as Frank Baldwin, into my custody as Marshal, as aforesaid, and to hold him until discharged by due process of law, which said warrant of commitment is hereto attached and made part of this return, and which said warrant was issued upon the
33 written and same complaint which is set forth in the petition of said Thomas Baldwin for the issuance of said writ of habeas corpus, and which said complaint is hereby referred to and made part of this return. That said Thomas Baldwin has been held by me as Marshal, as aforesaid, and not otherwise, since the 13th day of March, 1886, under said warrant of commitment; and said Thomas Baldwin has never been ordered discharged from custody by any competent authority.

J. C. FRANKS, *U. S. Marshal.*

San Francisco, March 18th, 1886.

UNITED STATES OF AMERICA,
District of California, City of Sacramento. } ss.

The President of the United States, to the United States
34 Marshal for the District of California, and to his Deputies or any or either of them, greeting:

Whereas, Frank Baldwin has been arrested upon the oath of John Sing for having, on or about the 17th day of February, A. D. 1886,

at the town of Nicolaus, County of Sutter, State of California, in the district aforesaid, committed the crime of conspiracy, and has not been examined by me, B. N. Bugby, a Commissioner of the Circuit Court of the United States for said District of California, upon the aforesaid charge, and has been required to give bail in the sum of one thousand dollars for his appearance before me on the 15th day of March, 1886, at 1 o'clock P. M. of said day, for examination, which requisition he has failed to comply with said order.

These are, therefore, to command you, in the name and by the authority aforesaid, to receive the said Frank Baldwin into your custody, and safely keep the said Frank Baldwin to await further examination.

Given under my hand and official seal, in the city and district aforesaid,

B. N. BUGBEY, [SEAL.]
Commissioner of the Circuit Court of the United States for the District of California.

In the Circuit Court of the United States, District of California.

IN THE MATTER OF THOMAS BALDWIN, on Habeas Corpus. } No. 3989.

The President of the United States of America, to J. C. Franks, United States Marshal for the District of California, greeting:

You are hereby commanded, that you have the body of Thomas Baldwin, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Thomas Baldwin shall be called or charged, before the Honorable Lorenzo Sawyer, Judge of the Circuit Court of the United States, for the District of California, at the Court-room of said Court, in the City and County of San Francisco, California, forthwith to do and receive what shall then and there be considered, concerning the said Thomas Baldwin, and have you then and there this writ.

Witness, the Hon. MORRISON R. WAITE,
Chief Justice of the Supreme Court of the United States, this 16th day of March, A. D. 1886.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By F. D. MONCTON, *Deputy Clerk.*

Endorsed:
Filed on return, this 18th day March, 1886.
L. S. B. SAWYER, *Clerk.*

The said case having been heard on the said petition, writ and return, taken as true at the present term of the Court, and there being an opposition of opinion between the Judges, the petitioner was remanded to the custody of the Marshal, in pursuance of the opinion of the presiding Judge.

A copy of the judgment and order remanding said petitioner is hereby made a part of this certificate, and directed to be certified as a part of the record.

37 Upon the hearing, there occurred the following questions, arising on the papers and said record:

1. Whether the acts alleged in said petition and writ, for which the petitioner is held in custody, constitute an offense within the meaning of the provisions of Section 5519 of the Revised Statutes of the United States, supposing said section to be constitutional and valid, so far as it embraces the Chinese subjects residing in the United States and State of California, against whom the conspiracy is alleged to have been formed?

2. Whether said section is constitutional and valid, so far as it embraces a conspiracy against subjects of the Chinese Empire residing in the United States and State of California, to deprive them of rights, immunities or privileges granted to them under and in pursuance of the several treaties between the United States and the Emperor of China?

38 3. Whether, in view of the provisions of the Constitution of the United States, making the Constitution and laws and treaties made in pursuance thereof, the supreme law of the land; the provision empowering the President, with the advice and consent of the Senate, to make treaties and the provision authorizing Congress to pass all laws necessary and proper for carrying into effect the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof; and in view of the provisions of the several treaties between the United States and the Emperor of China, securing certain rights to Chinese subjects residing in the United States; the provisions of said Section 5519, so far as they embrace such Chinese subjects, making it an offense to conspire, directly or indi-
39 rectly, to deprive such Chinese residents of the United States and of the State of California of any of the rights, immunities and privileges secured to them by virtue of said treaties and Constitution, is constitutional and valid?

4. Whether a conspiracy of two or more persons in the State of California, for the purpose of depriving Chinese residents, lawfully residing in California, in pursuance of the provisions of the several treaties between the United States and the Emperor of China, of the right to live and pursue their lawful vocations at the town of Nicolaus, in said State, and in pursuance of such conspiracy actually, forcibly expelling such Chinese from said town, in the manner shown by the record is: 1. A violation of and an offense within the meaning of Section 5519 of the Revised Statutes of the United States. 2. Whether said section, so far as it applies to said
40 state of facts and such Chinese residents, and makes the acts stated an offense against the United States, is constitutional and valid?

5. Whether Section 5519, so far as it embraces the prohibited acts performed against Chinese subjects, lawfully residing within the United State, and State of California, in pursuance of the provisions of the various treaties between the United States and China, is constitutional and valid?

6. Whether the acts set out and described in the record constitute an offense, within the meaning of Section 5519 of the Revised Statutes of the United States, and if so, whether said section is constitutional and valid as to such offense?

7. Where two or more persons, with or without disguise,
41 go upon the premises of Chinese subjects, lawfully residing in the State of California, with intent to prevent and hinder their free exercise or enjoyment of any right secured to them by the several treaties between the United States and the Emperor of China, and, in pursuance of such conspiracy, forcibly prevent their exercise and enjoyment of such rights, and expel such Chinese subjects from the town in which they reside.

Whether, (1), Such acts so performed constitute an offense within the meaning of the provisions of Section 5508 of the Revised Statutes of the United States? and,

(2) If so, whether the provisions of said section, so making said acts an offense, are constitutional and valid?

(3) Whether such acts so performed constitute an offense, within the meaning of that clause of Section 5336 of the Revised
42 Statutes of the United States, which makes it an offense for two or more persons in any State to conspire, "by force, to prevent, hinder, or delay the execution of any law of the United States," or within the meaning of any other clause of said section? and,

(4) Whether said section, so far as applicable to the facts stated, is a constitutional and valid law of the United States?

8. Whether said acts, set out in said record, constitute an offense within the meaning of said Section 5336? or within the meaning of said Section 5508?

9. Whether the acts set out in said petition, writ and return, and appearing in said record, constitute an offense against the United States, under any constitutional and valid law of the United States?

43 Upon which several questions, and upon each of them, the opinions of the judges were opposed.

Whereupon, on motion of Hall McAllister, Esq., of counsel for respondent, and upon request of Alfred Barstow, Esq., of counsel for petitioner, that the several points on which the disagreement has happened, may, during the term, be stated, under the direction of the Judges, and certified under the seal of the Court, to the Supreme Court of the United States, to be finally decided: It is ordered, that the foregoing statement of the record upon which the

case was heard, and of the facts and the points of law upon which the Judges differed, which is made under the direction of the Judges, be entered of record, and be certified accordingly, at the request of said counsel, in pursuance of the law in such case made and provided.

(Signed,) LORENZO SAWYER,
Circuit Judge.

[Signed,) SABIN, *Dist. Judge.*

Endorsed:

Filed and entered March 31, 1886.

44 L. S. B. SAWYER, *Clerk.*

Circuit Court, District of California.

In re THOMAS BALDWIN, On Habeas Corpus. } No. 3,989.

March 31, 1886.

CONSTITUTIONAL LAW—SECTION 5,519, REVISED STATUTES.—The constitutionality of section 5,519 of the revised statutes of the United States, so far as it embraces a conspiracy to deprive Chinese residents of any State, of the privileges and immunities secured to them by existing treaties, discussed, and a certificate of opposition of opinion between the judges granted.

Before Sawyer, Circuit Judge, and Sabin, District Judge.

A. L. Hart, for the petitioner.

Hall McAllister and J. W. Armstrong, for the respondent.

SAWYER, C. J.: The petitioner is in the custody of the marshal of this district, under a warrant issued by a United States
45 commissioner, upon a charge of conspiracy with a number of other persons named, to deprive certain Chinese residents of the town of Nicolaus, but not citizens of the United States, of their right to reside, and pursue their lawful vocations in said town, and of actually depriving them of such right, by forcibly expelling them from their homes and from the town in pursuance of said conspiracy, thereby depriving them of their rights and privileges under the laws, and of the equal protection of the laws, guaranteed to them under our treaty with China. The charge is, apparently, founded upon section 5,519 of the revised statutes of the United States, which, so far as applicable to this case, provides that:

"If two or more persons in any state or territory conspire..... *for the purpose of depriving, directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws,* ..... each of such persons shall be punished by a fine of not less than five hundred dollars, or more than five thousand dollars, or by imprisonment with or without hard labor, not less than six months, nor more than six years, or by both such fine and imprisonment."

It seems to me, that there can be no doubt, that the acts charged are within the provisions of this section, and if the provisions, so far as they embrace Chinese aliens—subjects of the Emperor of China—are constitutional and valid, that they constitute a very grave offense against the United States. So far as the provisions relate to the territories over which the United States have exclusive legislative power, there can be little doubt that the act is valid. (National Bank *vs.* Yankton, 101 U. S., 129, 133.) If invalid so far as the State is concerned, the provision as to the territories is easily severable, and it will be upheld so far to be valid. (Packet Co. *vs.* Keokuk, 95 Id., 80, 89; Presser *vs.* Illinois, 6 Sup. Ct. R., 583.) But in United States *vs.* Harris (106, U. S., 629), this provision was held to be unconstitutional and void, so far as it applies to citizens of the United States, within a State. If that decision is applicable to the facts of this case, of course it is controlling, and the petitioner is unlawfully held, and must be discharged.

But the case of Harris depended solely upon the Fourteenth Amendment, which was held to be aimed only at *State* action, and did not apply to unlawful combinations of individual citizens against other citizens, acting wholly without color of law, or authority of the State. On that ground, alone, it was held to be unconstitutional—the provisions authorizing appropriate legislation to enforce the amendment, extending no further than to protect the rights expressly provided for in the amendment. In this case, however, the Chinese aliens, against whom the conspiracy is aimed, do not rely upon the Fourteenth Amendment alone, or at all, except so far as the right to enjoy all the privileges and immunities of citizens, and the equal protection of the laws, is implied from its provisions, recognizing the rights, by protecting them from hostile State legislation, upon the principles adopted in *Ex parte* Yarbrough (110 U. S., 652, 664, 665,) and United States *vs.* Waddell (112 Id., 76, 80.) They rely, mainly, upon other express provisions of the Constitution. Article 6 of the National Constitution provides that, "this constitution and the laws of the United States, which shall be made in pursuance thereof; and all *treaties* made, or which shall be made, under the authority of the United States, shall be the *supreme* law of the land, and the *judges in every State* shall be bound thereby, *anything in the constitution, or laws of any State to the contrary, notwithstanding.*"

Art. 1, Sec. 10: "That no State shall enter into any treaty, alliance, or confederation."

Art. 2, Sec. 2: That the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur," and the last clause of Section 8, Article 1, that Congress "shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, *and all other powers vested* by this constitution in the government of the United States, or in any *department* or *officer* thereof."

Thus the States have surrendered the treaty-making power to the general government, and vested it exclusively in the President and

Senate, and when duly exercised by the President and Senate, the treaty resulting becomes the supreme law of the land, to which not only State laws, but State constitutions, are in express terms subordinated. As to what subjects are within the treaty-making power, see Parrott's Case (6 Saw., 368, 369), and the numerous cases there cited. It certainly, under the authorities there cited, embraces the entire subject-matter of our treaties with China. The rights, privileges, and immunities guaranteed are within the treaty-making power to grant. They are created under, and are dependent upon the Constitution of the United States. And in United States *vs.* Reese, the Supreme Court holds that, "rights and immunities *created*
46 *by, or dependent upon*, the Constitution of the United States, *can be protected by Congress.* The form and manner of protection may be such as Congress, in the legitimate exercise of legislative power, shall provide. This may be varied to meet the necessity of the particular right to be protected." (92 U. S., 217.) And in Yarbrough's Case, the Supreme Court says: "The power arises out of the circumstance that the function in which the party is engaged, or *the right which he is about to exercise is dependent on the laws of the United States.* In both of these cases *it is the duty of the government to see that he may exercise this right freely, and to protect him from violence while so doing, or on account of so doing.*" (110 U. S., 628; 112 Id., 80). There is nothing in the suggestion of counsel that the Chinese, on this principle, are better off than citizens. It is presumed that the State will protect its own citizens, while long experience shows, that it will not always protect foreigners against the prejudices and hatred of citizens. But whether the suggestion be true, or not, cannot affect the question; for the State has not in this particular, surrendered the power of protecting its own citizens among themselves, to the United States. It has, however, surrendered its power over the intercourse of its citizens with foreign nations to the National Government. The relations between the United States and foreign governments are matters of international and not mere State concern. The power to make treaties and to grant rights, within the State, to aliens, under treaties, necessarily involves the power to protect those rights when granted, either against the acts of the States, or the citizens of the several States. Without this power of protecting the rights granted to aliens by treaty, against hostile, local prejudices, the power to grant such rights would be utterly futile, and nugatory. Every right must have its remedy or it is practically no right. The power to grant, without the power to protect, would be but in name without the substance. It is necessary for the National Government to be empowered to execute its own laws, and especially its treaty stipulations with other nations. Without this power it would be impossible to avoid giving good cause for wars. Hence the power to protect the rights granted under treaties, as correlative to the power to grant, was fully vested in Congress by the Constitution. If this puts the Chinaman, as is said, in a better position than the citizen, so be it. But the State has surrendered that power to the general government in the one case, while it has not done so, in the other. It might as well be said that

the alien, Chinese or other nationality, is better off than the citizen, because the former can always sue a citizen in the national courts, while the latter cannot. There can be no doubt, that making the violation of any rights so secured by the Constitution and treaties "made under the authority of the United States" by a combination of individuals, a criminal offense against the nation and punishable as such, as is provided by Section 5,519, is a proper mode of protection.

Such combinations to violate treaty rights are matters not merely of State, but international concern, and may well involve questions of peace and war. By article 5 of the treaty called the Burlingame treaty "the United States and the Emperor cordially recognize the *inherent* and *inalienable right* of man to change his home and allegiance, and, also, the mutual advantage of the free migration and emigration of their citizens and subjects, respectively, from the one country to the other, for the purposes of curiosity, of *trade*, or *as permanent residents*." And article 6 further secures to Chinese residents "all privileges, immunities and exemptions enjoyed by the citizens and subjects of the most favored nation." (16 Stats., 740.) The amended treaty of 1880 adds the still more comprehensive word "*rights*" to the words "privileges, immunities and exemptions," and expressly provides that "Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord." And article 3 of the latter is as follows:

"If Chinese laborers, or Chinese of any other class, now either *permanently* or *temporarily* residing in the territory of the United States, meet with ill-treatment *at the hands of any other persons*, the Government of the United States will exert all its power to devise measures for their protection, and to secure to them the same *rights*, privileges, immunities and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty." (22 Stats., 827.)

Our treaty with Great Britain, still in force, will disclose what some of the rights so secured to the Chinese by these treaties are. It provides that "the inhabitants of the two countries, respectively, shall have liberty freely and securely to come with their ships and cargoes to all such places, ports and rivers in the territories aforesaid [of the United States and Great Britain in Europe] to which other foreigners are permitted to come, to enter into the same, and *to remain and reside in any parts of the said territories, respectively.*" (Public Treaties, 293, 299, 312.)

Thus the United States Government has, by these treaties, made in pursuance of the Constitution and under the authority of the United States, imposed upon itself the express obligation "to exert all its power to devise means for their [Chinese residents] protection," and to secure them the "*rights*, privileges, immunities and exemptions" to which they are entitled, where such Chinese residents "meet with ill-treatment *at the hands of any other persons*," as well as in consequence of unfriendly legislation by the States. This right is not limited to State action, as the Fourteenth Amendment was held to be limited, but it is expressly extended to individual acts.

47 Among those rights is the right to select a place for *temporary or permanent residence*, and to reside and pursue their lawful vocations at the places so selected. As to what the privileges and immunities secured are, see Parrott's Case, 6 Saw., 373, and cases cited; and People *vs.* Marx, 99 N. Y., 386. Proper means for protecting these rights, certainly, include the enacting of criminal laws for enforcing, protecting, and securing the rights guaranteed by the treaties made in pursuance of the provisions of the Constitution cited.

These Chinese residents of Nicolaus, therefore, had rights arising under, and dependent upon, the Constitution of the United States, and the treaties made in pursuance thereof, between the United States and the Emperor of China, which were violated by the acts charged, upon which the arrest was made, and rights, which it was competent for Congress to protect by legislation in a proper form, under the clause cited, which authorizes it "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this Constitution in the Government of the United States or in any department thereof." And it was its imperative duty to protect such rights. Thus the case of the Chinese residents of Nicolaus is clearly distinguishable from that of United States citizens arising under the Fourteenth Amendment, considered in the case of United States *vs.* Harris, *supra*, and rests upon other and further provisions of the national Constitution. Had Section 5519 been expressly limited in terms without including any other parties to a conspiracy for depriving, directly or indirectly, *Chinese subjects* residing in the United States of the "equal protection of the laws," or of "equal privileges and immunities under the laws," guaranteed to them by the treaties, there could, scarcely, be a doubt, I think, of its constitutionality and validity. If, therefore, it be void, as to the Chinese subjects affected by the acts charged, as well as to similar acts perpetrated upon citizens of the United States, it is only so, because Congress has attempted to accomplish too much in the same section, by the use of language too comprehensive, including persons to whom these powers did not extend, and by so doing has vitiated the whole. It is not because the language does not include them, or for want of constitutional power, but for want of proper form in the provision—because it is too broad; simply because it has spread too large a net. But Chinese subjects residing in the United States, under the stipulations of our treaties with China, constitute a separate, distinct, independent class, with distinctly defined and easily recognized limits; and it is not readily perceived, why the *class* may not be easily segregated and the provisions of the statute held constitutional and valid, and be fully enforced as to that class, even though void as to other persons and classes, relying on other provisions of the Constitution, easily recognized, and without difficulty segregated.

Why should not the principle adopted in Packet Co. *vs.* Keokuk, affirmed in Presser *vs.* Illinois, at the present term of the Supreme Court, apply? The Chinese residents under the treaty, may be regarded as a subject-matter entirely distinct from citizens of the United States. The provisions of the section as to the States, and

as to the Territories, operate, certainly, upon distinct subjects-matter, and the act, I take it, could, and would be held valid under the authorities cited, as to the Territories, even though void as to the States and their citizens. They are easily segregated, then why cannot the Chinese residents as one subject-matter be separated from citizens as another, upon similar principles?

The language of the Court in United States *vs.* Harris on this point should, doubtless, be considered with reference to the special facts of the case then in judgment. But still, it must be confessed, that it is very broad, and the rule laid down may be intended to cover any case that can be brought within the terms of the statute. If so, of course, the ruling is authoritative and controlling in this Court. But like Congress, in the language of Section 5519, may not the Court also have, inadvertently, used language broader than the exigencies of the case before it required?

It is proper to observe, that in the case of Reese, there was a defect in the statute, and also in the indictment, in the omission of one constitutional element, or ingredient necessary to constitute the offense. Under the Fifteenth Amendment then in question it was necessary that the discrimination should be "on account of race, color, or previous condition of servitude." *This essential element was omitted* in the act, and in the indictment, and the Court could not perfect the statute or indictment by inserting it. It was with special reference to this omission, that the Court made the observations in respect to separating the constitutional from the unconstitutional part of a provision so manifestly indefinite, afterward repeated in United States *vs.* Harris, with reference to the Thirteenth Amendment. To the provisions and facts then under discussion, the observations seem to me to be more appropriate, than to the sections of the statutes, constitutional provisions, and the facts, as now presented. It must be remembered that Section 5519 has, thus far, only been considered by the Supreme Court, with reference to the authority conferred upon Congress by the Thirteenth, Fourteenth, and Fifteenth Amendments relating to specific subjects-matter. It has never yet been considered with reference to the powers conferred by the more general and comprehensive clauses cited in this opinion from the Constitution, as originally adopted. The difference between the cases is very obvious, and the result arising upon the different conditions may, and it seems to me should, be entirely different.

The only difficulty I have is in satifactorily determining, whether the rule indicated in United States *vs.* Harris, or that in Packet Co. *vs.* Keokuk, *supra*, relating to the segregation of the constitu-
48 tional from the unconstitutional parts of the section should be applied to the facts disclosed in the petition, writ, and return in this case. I can perceive no practical difficulty in applying the rule adopted in the latter case. If there is none, it should be applied. The specific question is one of vast consequence to the entire Chinese population of the United States, and of the utmost importance to the peace and good order of society throughout the entire Pacific Coast. It is of international consequence, involving the honor and good faith of the United States, and possibly the question of peace

or war. If this section of the statute is valid, as to Chinese subjects residing in the United States, and embraces the acts set out in the petition and return, then the acts of all the public meetings throughout the land looking to, and providing for depriving Chinese subjects of the rights, privileges, immunities, and exemptions, secured to them by our treaties with China, by means, popularly known as "boycotting," or any other coercive means, no matter in what form, or through what channels applied, are criminal, and all those participating in them must be subject to the very severe penalties denounced by the statute. I can perceive no way of escaping this conclusion. The depriving of persons of any of the rights protected, by any means, either "*directly or indirectly*," is prohibited. Where one has a lawful right to do any given thing, it would seem that no body of other persons can, properly or lawfully, combine or conspire together to use coercive means, in any form, to prevent him from doing that thing. The two rights are inconsistent, and cannot properly co-exist. It can make no difference in principle whether the coercion is applied by direct force, or by combined and concerted action, to prevent him from exercising his right, by depriving him of the means of procuring a livelihood, and thereby inducing starvation, or even less serious consequences.

If the statute in this particular is not valid, then there are no means now provided by Congress of protecting Chinese subjects in the enjoyment of the rights secured to them by the treaties through the criminal laws of the country, unless the acts are within the provisions of section 5508, or 5336, R. S., and if there is no statute covering the case, then the Government has not yet fulfilled its treaty obligations under Article 3 of the treaty of 1880. I shall not stop to discuss Section 5508, and only remark that Section 5336 provides that: "If two or more persons in any State or Territory conspire to overthrow, put down, or destroy by force the government of the United States, or to levy war against them, or to oppose by force the authority thereof; *or by force to prevent, hinder, or delay the execution of any law of the United States;* or by force to seize, take, or possess any property of the United States, contrary to the authority thereof, each of them shall be punished by a fine of not less than five hundred dollars, and not more than five thousand dollars, or by imprisonment with or without hard labor, for a period of not less than six months, nor more than six years, or by both such fine and imprisonment."

A treaty, says the Constitution, is a part of "the supreme law of the land." It has been insisted, that the acts set forth in the petition, constitute a conspiracy by force to prevent, hinder, or delay the execution of the treaty stipulations, or obstruct their operation, which, it is said, is equivalent to obstructing its execution, and, therefore, of obstructing the execution of a law of the United States. If this be so, then the acts charged constitute an offense against the United States under this section, as well as under Section 5519. I am officially informed that thirteen persons have just been indicted under this section in one of the districts of this circuit. But it seems to me that the acts are not so manifestly within the provisions of this section and Section 5508, as within Section 5519.

The specific questions now presented are questions of too vast consequence to be finally determined by a subordinate court. The peace and good order of the Pacific Coast, and the honor and good faith of the nation are involved, and require that the question should be at once presented to, and promptly decided by, the Supreme Court of the United States.

The Supreme Court, in United States *vs.* Harris, *supra*, says: "Proper respect for a co-ordinate branch of the Government requires the courts of the United States to give effect to the presumption that Congress will pass no act not within its constitutional powers. This presumption should prevail, unless lack of Constitutional authority to pass the act in question is clearly demonstrated." Page 635.

If there be any doubt then as to the constitutional authority of Congress to pass Section 5514, in its present comprehensive form, so far as it embraces the specific facts disclosed in this case, which have not yet been considered by the Supreme Court, or as to the applicability of the observations of the Supreme Court, in relation to separating the constitutional from the unconstitutional parts of the Act, to the specific facts now presented—the only point upon which I entertain any doubt—the doubt should be resolved, especially in this court, in favor of the validity of the statute in this particular, and the question be referred at once to the Supreme Court, to be authoritatively determined.

As there is doubt in my mind upon the point suggested under the authorities as they now stand, I shall for the present, and for the purposes of this case, rule against the petitioner, remand him to the custody of the Marshal, and dismiss the writ.

I do not desire, however, to be considered as finally determining the question in such sense, that it will not be opened for
49 reconsideration, should the question be again presented in other cases, before an authoritative decision can be had in the Supreme Court.

My associate, though with doubt and hesitation, dissents from the rulings made, and a certificate of opposition of opinion will be made if either party desires it, and a writ of error to the Supreme Court allowed

In view of the circumstances and of the doubts entertained, should a writ of error be taken, the prisoner will be allowed to go at large on his own recognizance, until the decision on appeal. And in case the writ is pressed to an early hearing, it is suggested that the government do not prosecute other similar cases arising under the Revised Statutes, especially such as have already arisen, until an authoritative decision can be had.

Let the writ be dismissed, and the prisoner remanded to the custody of the Marshal.

Endorsed:

Read in open Court March 31, 1886.

L. S. B. SAWYER, *Clerk.*

In the Supreme Court of the United States.

IN THE MATTER OF THE APPLICATION OF THOMAS BALDWIN FOR A WRIT OF HABEAS CORPUS.

Know all men by these presents, that we Frank Ruhstaller and Peter Flaherty are held, and firmly bound unto the Marshal of the United States of America, for the District of California, in the sum of two hundred dollars, to be paid to said Marshal, or his successor. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Dated this 2d day of April, A. D. 1886.

Whereas, the above named Thomas Baldwin has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by the Circuit Court of the United States of America, for the District of California, in the matter of the application of Thomas Baldwin for a Writ of Habeas Corpus.

Now, therefore, the condition of this obligation is such, that if the above named Thomas Baldwin, plaintiff in error, shall prosecute his said Writ of Error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

FRANK RUHSTALLER.
PETER FLAHERTY.

UNITED STATES OF AMERICA, } ss.
District of California. }

Frank Ruhstaller, Peter Flaherty, being duly sworn, each for himself, deposes and says, that he is a householder in said district, and is worth the sum of two hundred dollars, in lawful money of the United States of America, exclusive of property exempt from execution, and over and above all just debts and liabilities.

FRANK RUHSTALLER.
PETER FLAHERTY.

Subscribed and sworn to before me, this second day of April, 1886.

[SEAL.]

B. N. BUGBEY,
Commissioner, Circuit Court, United States, for the District of California.

Endorsed:

The form of the within bond, and the sufficiency of the sureties thereon, is hereby approved.

April 5, 1886.

(Signed,) LORENZO SAWYER,
Circuit Judge.

Filed, April 5, 1886.

L. S. B. SAWYER, *Clerk.*

In the Circuit Court of the United States, for the District of California.

IN THE MATTER OF THE APPLICATION OF THOMAS BALDWIN, For a Writ of Habeas Corpus. } No. 3,989.

I, L. S. B. Sawyer, Clerk of the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the District of California, do hereby certify that the foregoing fifty-two written and printed pages, numbered from one to fifty-two, inclusive, are a full, true and correct copy of the record and of all proceedings in the above and therein entitled matter, and that the same together constitute the return to the annexed Writ of Error.

Witness my hand and the seal of said Circuit Court, this 6th day of April, A. D. 1886.

[SEAL.] L. S. B. SAWYER, *Clerk.*

UNITED STATES OF AMERICA.—*ss.*

The President of the United States of America, to the Judges of the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the District of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court, before you between Thomas Baldwin, Plaintiff in Error, and J. C. Franks, Marshal of the United States of America, for the District of California, Defendant in Error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington, in the District of Columbia, on Tuesday, the 20th day of April, 1886, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Hon. MORRISON R. WAITE, Chief Justice of the Supreme Court of the United States, this 5th day of April, in the year of our Lord, one thousand eight hundred and eighty-six, and of the independence of the United States, the one hundred and tenth.

[SEAL.] L. S. B. SAWYER,
Clerk of the Circuit Court of the United States, for the District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

The answer of the Judges of the Circuit Court of the United States, for the District of California:

The record and all proceedings of the plaint, whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the Supreme Court of the United States, within mentioned, at the day and place within contained in a certain schedule to the writ annexed, as within we are commanded.

By the COURT.

[SEAL.] L. S. B. SAWYER, *Clerk.*

Endorsed: No. 3,989. United States Supreme Court. Thomas Baldwin, Plaintiff in Error, *vs.* J.C. Franks, U. S. Marshal, etc., Defendant in Error. Writ of Error.

Service of a copy of the within Writ of Error, is hereby acknowledged. J. C. Franks.

Filed, April 5, 1886. L. S. B. Sawyer, Clerk.

UNITED STATES OF AMERICA.—*ss.*

To J. C. Franks, Marshal of the United States of America, for the District of California, greeting.

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the twentieth day of April, A. D., 1886, pursuant to a Writ of Error, filed in the Clerk's office of the Circuit Court of the United States of America, for the District of California, wherein Thomas Baldwin is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, Judge of the Circuit Court of the United States, of the Ninth Judicial Circuit, District of California, this fifth day of April, A. D., 1886, and of the Independence of the United States, the one hundred and tenth.

[SEAL.] LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

Endorsed: No. 3989. In the Supreme Court of the United States. Thomas Baldwin, pl'ff in error, *vs.* J. C. Franks, U. S. Marshal, etc., def't in error.
Citation.

Service of a copy of the within citation is hereby acknowledged.
J. C. Franks.

Filed April 5, 1886. L. S. B. Sawyer, Clerk.

No. .....

In the Supreme Court

OF THE

UNITED STATES.

In re Thomas Baldwin

ON HABEAS CORPUS.

BRIEF ON BEHALF OF PETITIONER.

A. L. HART,
Attorney for Plaintiff in Error.

Filed in Office, ..., *1886.*

.....*Clerk.*

By .....*Deputy Clerk.*

SACRAMENTO:
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1886.

IN THE

Supreme Court of the United States.

IN RE THOMAS BALDWIN
ON HABEAS CORPUS.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

The plaintiff was arrested by the United States Marshal, upon a warrant issued by a United States Commissioner, for the crime of conspiracy. The warrant was issued in pursuance of Section 5519 of the Revised Statutes of the United States and upon a complaint, of which the following is a copy:

UNITED STATES OF AMERICA,
District of California. } ss.

Be it remembered, that on the 8th day of March, A. D. 1886, before me, B. N. Bugbey, a Commissioner duly appointed by the Circuit Court of the United States of America for the District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in the civil causes depending in the Courts of the said United States pursuant to the Act of Congress, in that behalf personally appeared John Sing, who was by me duly sworn according to law, and he deposes and says, that the crime of conspi-

racy was committed by more than two persons, who conspired together for the purpose of depriving a class of persons, then being subjects of the Emperor of China, to wit: Chinese aliens belonging to said class, and of equal privileges and immunities under the laws; that is to say, on or about the 17th day of February, A. D. 1886, within the jurisdiction of the United States aforesaid and of this Honorable Court, to wit: at the Town of Nicolaus, in the County of Sutter, in the State of California, Charles Wessing, Edward Wessing, H. Wessing, Thomas Thornton, Alfred Wagner, Matthew Mutchler, David Redfield, Daniel McCarty, George Scott, Charles Engrasser, Frank Valley, and one Elliott, whose Christian name is unknown to affiant, and Thomas Baldwin, Bird Wilson, William Hays, and one McElroy, whose Christian name is unknown, and divers other persons, to said affiant unknown, did conspire together for the purpose of depriving the following persons, to wit: Sing Lee, John Sing, Hee Sook, Lun Mow, Ching Hung, Chun Gong, Lee Yung, Gin Nun, Len Woon, Sum Geung, Luey Suey, Yen Mong, Tung Fat, Yuck Yow, Hen Ain, and Fuey Hang, belonging to said class of Chinese aliens, being at the said time subjects of the Emperor of China, of the equal protection of the laws and of equal privileges and immunities under the laws, for that said last named persons, so belonging to the class of Chinese aliens, did then and there reside at the Town of Nicolaus in said County of Sutter, in said State of California, and were engaged in legitimate business and labor to earn a living as they had a right to do, and they at that time had a right to reside at said Town of Nicolaus, in said County of Sutter, in said State of California, and engage in legitimate business and labor to earn a living, under

and by virtue of the treaties existing and which did then exist between the Government of the United States and the Emperor of China, and the Constitution and laws of the United States; but nevertheless, while said last named persons were then and there so residing and pursuing their legitimate business and labor for the purpose aforesaid, said conspirators, to wit: Charles Wessing, Edward Wessing, H. Wessing, Thomas Thornton, Alfred Wagner, Matthew Mutchler, David Redfield, Daniel McCarty, George Scott, Charles Engrasser, Frank Valley, and one Elliott, whose Christian name is unknown to affiant, and Thomas Baldwin, Bird Wilson, William Hays, and one McElroy, whose Christian name is unknown, and divers other persons to said affiant unknown, did then and there, having conspired together for the purpose, unlawfully, and with force and arms, violently and with intimidation, drive and expel said persons hereinbefore named belonging to said class of Chinese aliens, and being subjects of the Emperor of China, from their residence at said Town of Nicolaus, in said County of Sutter, and State of California, and did then and there deprive them, said Chinese aliens, who were then and there subjects of the Emperor of China, of the privilege of conducting their legitimate business and of the privilege of laboring to earn a living, and without any legal process the defendants placed said Chinese aliens, the subjects of the Emperor of China, under unlawful restraint and arrest and so detained them for several hours, and then and there by force and arms and with violence and intimidation placed them, said Chinese aliens, the subjects of the Emperor of China, upon a steamboat barge then plying on the Feather River and drove them from their residence and labor,

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of the provisions of the several treaties between the United States and the Emperor of China of the right to live at and pursue their lawful vocations at the Town of Nicolaus in said State, and in pursuance of said conspiracy, actually, forcibly expelling such Chinese from said town in the manner shown by the record, a violation of, and an offense within the meaning of Section 5519 of the Revised Statutes of the United States? Is said section, so far as it applies to said state of facts, and such Chinese residents, an offense against the United States, constitutional and valid?

5. Whether said Section 5519, so far as it embraces the prohibited acts performed against Chinese subjects lawfully residing within the United States in pursuance of the various treaties between the United States and China, is constitutional and valid?

6. Whether the acts set out and described in the record constitute an offense within the meaning of Section 5519 of the Revised Statutes of the United States, and if so, whether said section is constitutional and valid as to such offense?

7. Where two or more persons, with or without disguise, go upon the premises of Chinese subjects, lawfully residing in the State of California, with intent to prevent and hinder their free exercise or enjoyment of any right secured to them by the several treaties between the United States and the Emperor of China, and in pursuance of such conspiracy, forcibly prevent their exercise and enjoyment of such rights, and expel such Chinese subjects from the town in which they reside. 1. Whether such acts so performed constitute an offense within the meaning of Section 5508 of the Revised Statutes of the United States? And 2. Whether the pro-

visions of said section so making said acts an offense, are constitutional and valid? 3. Whether such acts so performed constitute an offense within the meaning of that clause of Section 5336 of the Revised Statutes of the United States, which makes it an offense for two or more persons in any State to conspire "by force, to prevent, hinder or delay the execution of any law of the United States," or within the meaning of any other clause of said section? And 4. Whether said section, so far as applicable to the facts stated, is a constitutional and valid law of the United States?

8. Whether said acts set out in said record constitute an offense within the meaning of said Section 5336, or within the meaning of said Section 5508?

9. Whether the acts set out in said petition, writ and return, and appearing in said record, constitute an offense against the United States under any constitutional and valid law of the United States?

From the judgment of the said Circuit Court, dismissing the said writ and remanding the prisoner to the custody of the Marshal, this writ of error is prosecuted.

ASSIGNMENTS OF ERROR.

1. Section 5519 of the Revised Statutes of the United States provides:

"If two or more persons, in any State or Territory, conspire * * * for the purpose of depriving, directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws, * * * each of such persons shall be punished by a fine of not less than five hundred dollars, or more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months, nor more than six years, or by both such fine and imprisonment."

such conspiracy, was a violation of Section 5519 of the Revised Statutes of the United States, and an offense within the meaning of said section, and that said section, so far as it applies to such a state of facts and to such Chinese residents, is constitutional and valid; and the said decision of the said Circuit Court is here assigned as error.

7. That the Circuit Court in this cause decided that the violation by American citizens of the rights of subjects of the Empire of China residing in this country, was not subject to the exclusive regulation of the Legislatures of the States, but that Congress might constitutionally provide for the punishment of such offenses committed by individual citizens, and that offenses consisting of conspiracy to prevent a subject of the Chinese Empire from residing in a particular locality in the United States, or from pursuing an occupation in a particular locality in the United States, were subjects of Congressional legislation and triable and determinable by the Courts of the United States; and the said decision is here assigned as error.

8. That the Circuit Court in said cause decided and adjudged that the right of the subjects of the Empire of China, lawfully residing in the United States, to reside and pursue any occupation in the Town of Nicolaus, State of California, was a treaty right, for the violation of which by a citizen of the United States, the Congress of the United States has the power to provide a penalty and to confer upon the Circuit Court of the United States jurisdiction and power to enforce the same; and the said decision of the said Circuit Court is here assigned as error.

9. The Circuit Court in this cause decided and ad-

judged that Section 5519, when applied to offenses committed against the rights of American citizens, is unconstitutional and invalid; but that the said section, when applied to cases involving similar violations of the rights of the subjects of China, is constitutional and valid; and the said decision of the said Circuit Court is here assigned as error.

10. That the Circuit Court decided and adjudged in this cause that the offense, for which the plaintiff was arrested, and which is set out in the petition and complaint herein, is not exclusively within the jurisdiction of the State and its Courts; but that the same is within the jurisdiction of the Government of the United States and its Courts; and the said decision of the said Circuit Court is here assigned as error.

ARGUMENT.

Section 5519 of the Revised Statutes of the United States, under which the prosecution in this case was instituted against the plaintiff in error, is clearly unconstitutional and void, because it involves an exercise of the legislative power upon a subject which is not within the grant of power to Congress and the Federal Government. That it is violative of the Constitution when applied to the rights of citizens, is now definitely settled by the decisions of this Court, and that ~~legislation by Congress~~ the power to legislate for the purpose of protecting the rights of aliens upon the subjects embraced within that section has not been conferred upon Congress by the Constitution, would seem to be clear and beyond question.

That section of the statutes was evidently passed for the purpose of securing the rights guaranteed by the first section of the Fourteenth Article of Amendment of the Constitution. That such is true cannot be

doubted when the language of the said section of the Constitution and that of said section of the statute are considered and compared. The former prohibits the State from making or enforcing "any law which shall abridge the privileges or immunities of citizens of the United States," and from denying "to any person within its jurisdiction the equal protection of the laws;" while the latter makes it a penal offense for any two or more persons in any State or Territory to conspire "for the purpose of depriving, directly or indirectly, any person or class of persons, of the equal protection of the laws, or of equal privileges or immunities under the laws." The plain object, and the extent of the purpose, of that provision of the statute, as clearly shown by its language, was, by the infliction of severe penalties, to prevent the violation of those rights which were intended to be secured to all persons of every color, nationality and class, by the provisions of the Fourteenth Amendment; to prevent a violation of those rights, not by the States themselves, but by the residents and citizens of the States. Congress had evidently misconceived the extent of its power under that amendment of the Constitution, and was undertaking by direct legislation to prevent interference by individuals with the rights sought to be secured by the amendment. The purpose of the statute was to extend to all citizens and persons such protection as would enable them to enjoy the equal protection of the law, and to all citizens such protection as would enable them to enjoy all the privileges and immunities of citizens of the United States.

This Court, however, held that this provision of the statute was unconstitutional and void, as involving an attempted exercise by Congress of powers reserved to

the States, in the case of *United States v. Harris, 16 Otto, 629:* In that case, quoting from *United States v. Cruikshank*, this Court said:

"The Fourteenth Amendment prohibits a State from depriving any person of life, liberty, or property without due process of law, or from denying to any person the equal protection of the laws; but this provision does not add anything to the rights of one person as against another. It simply furnishes an additional guarantee against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, and no more. The power of the National Government is limited to this guaranty."

The purpose of that amendment of the Constitution was neither to confer upon the National Government any additional powers, so far as the subjects of legislation are concerned, nor to deprive the States of the right to legislate upon such subjects as have hitherto been regulated by them. Its purpose, on the contrary, was to establish fundamental principles to control the States in their legislative, executive and judicial conduct, and to prevent them from so legislating and enforcing their laws relating to subjects within their power, as to take from one person or class of persons rights and privileges which were granted to other persons; in other words, to compel the States when acting within the limit of their powers to extend to all an equality of rights and of protection. The purpose was not to obliterate, or in any manner to change or modify, the line dividing State and National jurisdiction, but it was to establish certain general principles which should limit the States in the

exercise of their legislative, executive and judicial powers. This doctrine is fully sustained by this Court in the Civil Rights cases (*109 U. S. page 11*) where it is said:

"It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment. It has a deeper and broader scope; it nullifies and makes void all State legislation and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere *brutum fulmen*, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition; to adopt appropriate legislation for correcting the effect of such prohibited State laws and State acts, and thus to render them effectually null, void and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment, but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must necessarily be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect."

It is evident, therefore, that the effect of the Fourteenth Amendment was not to confer upon Congress any additional power to legislate upon subjects relating to individual offenses or the individual invasion of, or interference with, the rights of citizens or persons, and that if the power here asserted by the Government may be legitimately exercised by Congress, that power must be found in the Constitution as it existed prior to the adoption of that amendment.

To the States have always been conceded some exclusive powers with which the Federal Government could never interfere, either through Congress, the treaty making power, its judiciary or its executive. Of these exclusive powers of the State, that of the regulation of its police, involving and embracing the maintenance of the order of persons residing within its boundaries, and the protection of its public health, and of the lives and property of those residing within its borders, has been the most familiar.

"Whatever difference of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health, and property of the citizens, and to the preservation of good order and the public morals. The Legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, '*salus populi suprema lex*;' and they are to be attained and provided for by such appropriate means as the Legislative discretion may devise."

Beer Co. vs. Massachusetts, 97 U. S. 33.

"The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the

people, and the internal order, improvement, and prosperity of the State."

New York v. Miln, 11 Peters, 130.

The power to punish for conspiracies, riots, murder, assaults, arson, robbery, and theft, and such other criminal violation of individual rights as tend to disturb the good order and peace of a State, falls within this reserved power which the States have always exercised, and which they unquestionably may legitimately exercise in the regulation of their internal police. A right in Congress to legislate upon such subjects for the protection of citizens of the several States will not be asserted, and if it can be successfully claimed that Congress may so legislate for the protection of alien residents, the authority for such a claim will not be found in any direct grant of power contained in the Constitution, but must be sought in some flexible rule to be asserted as an incident of the treaty making power; in other words, in the grant of power to the Federal Government which specifies the subjects upon which Congress may legislate, no distinction is made between instances in which citizens violate the rights of aliens, and instances in which they violate the rights of citizens, upon which it may be said that in the former case there is an extension of legislative power over and beyond that which may be exercised in the latter case. The subjects upon which Congress may legislate are clearly specified and enumerated in the Constitution; upon those subjects it may legislate generally without reference to the nature of the persons whose rights are to be protected; upon other subjects it may not legislate at all. If, therefore, Congress may not legislate against conspiracies to prevent persons from the exercise of lawful occupations, or to

prevent them from exercising any right secured to them by the laws of the State, made equal by the prohibitory clause of the Fourteenth Amendment, the nature of the person, as being a citizen or an alien, cannot extend to that body a power not conferred by the Constitution; if it may so legislate, the nature of the person whose rights may be violated cannot limit the legislative power of that body. The power of Congress must necessarily come from the Constitution; and that power can neither be limited nor extended by the treaty making power, nor by any other body deriving its authority from the same instrument.

It is asserted, however, that the authority here claimed on the part of the Federal Government, to deal with the subject of conspiracies against the rights of Chinese aliens, is derived from the treaty with China, and from Articles II and VI of the Constitution of the United States. An examination, however, of the treaty and of these articles of the Constitution, and a consideration of the result which would be produced by such a construction, will serve to demonstrate the fallacy of that argument.

By the fifth article of the treaty with China,

"The United States and the Emperor cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects, respectively, from the one country to the other for the purposes of curiosity, of trade, or as permanent residents."

That treaty also secures to Chinese residents all the rights, privileges, immunities and exemptions enjoyed by the citizens and subjects of the most favored nation. The amended Treaty of 1880 provides that Chinese

laborers, who are now in the United States, shall be allowed to go and come of their own free will and accord. Section 3 of the latter treaty provides:

"If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States, meet with ill treatment at the hands of any other persons, the Government of the United States will exert all its power to devise measures for their protection, and to secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty."

22 Stats. 827.

It will certainly not be claimed, that by this treaty with the Chinese Government, it was intended to change the nature and form of the American Government for the purposes and to the extent of affording protection to Chinese residents; nor that it was intended by the article of the treaty above quoted to imply that the Federal Government, by direct legislative action, intended to assume jurisdiction of every act of ill treatment to a Chinese resident which might be perpetrated by any person within the limits of the States. A literal construction, however, of that article of the treaty, accompanied with a concession of the power in the Government of the United States, would make it the duty of that Government, under its solemn treaty obligations, to provide for the punishment of every person who might assail a Chinese resident, disturb his peace, or deprive him of his property, in any manner or form whatsoever; for such an act would certainly be one of ill treatment. If the existence of treaty obligations can, under any circumstances, be said to operate to extend the legislative powers of Congress, or the

jurisdiction of the Federal Courts, then the existence of this clause in the treaty, bringing the subject-matter within the powers of the Government of the United States, would unquestionably make it the duty of that Government to devise a system of municipal law, sufficient in its scope, to protect Chinese residents against all "ill treatment at the hands of any other persons," whether citizens or aliens. It was not within the power of the President and Senate to thus obligate the Government of the United States, and such a result was certainly not intended and understood by the contracting governments.

In the construction of this stipulation in the treaty, care should be taken that the respective powers of the Federal and State Governments are not lost sight of, and the stipulation that "the Government of the United States will exert all its power to devise measures for their protection" should be read and construed in connection with the limited powers granted to that Government by the Constitution. It certainly cannot be claimed that by the stipulations of the treaty, the United States intended to agree that it would exercise its sovereignty in the passage of laws and the creation of Courts for the special purpose of protecting Chinese residents against acts, the punishment of which is generally provided for by State laws, enforced in State tribunals, and executed by State officers, such as assault, mayhem, conspiracy, murder and larceny; on the contrary it was intended by that Government, by its corrective power, vested in it by the Fourteenth Amendment and other provisions of the Constitution, to compel the States, in the protection of Chinese residents, to pass and maintain an equal system of laws and

to enforce them equally and justly. It was not intended by that treaty to create the possibility of two systems of municipal law, the one passed by Congress and enforced in the Federal Courts and applicable to Chinese alone; the other passed by the Legislatures of the States, enforcible in the State Courts and applicable to citizens as well as aliens. It could not have been the intention of the treaty making power, or the understanding of the Chinese Government, that by the treaty any considerable portion of the domain of State legislation should be covered by Congressional power which had not existed before that treaty was entered into; nor could it have been intended, by that treaty, to vest in the States and the Government a dual jurisdiction, so far as Chinese subjects are concerned, which was to be exercised by both governments, while but a single jurisdiction, exercised by the States alone, should continue to exist for the protection of the rights of citizens and other residents.

If the power of Congressional legislation may thus be extended by the President and the Senate, in the execution of treaties, over subjects not enumerated in the grant of power to the Federal Government, no reason can be urged why the treaties of this Government may not be so extended in their stipulations as to embrace every subject of ordinary municipal legislation which has hitherto been conceded to the States. If the powers of Congress thus to legislate with a view to the protection of the treaty rights of aliens may be extended in this manner, there is certainly nothing to be found in the Constitution which limits the treaty making power in this respect. The power to make treaties is conferred in general terms upon the President by Article

II of the Constitution, and that power is only limited to the making of treaties "by and with the advice and consent of the Senate."

It must be conceded that, in the absence of treaty stipulations, conspiracy formed and executed by two or more persons against some other person, would not be a subject falling within the legislative power of Congress. If, therefore, the President, by and with the advice and consent of the Senate, may so stipulate as to deprive the States of the exclusive power to legislate upon the subject of conspiracies against individual rights, why is it not equally competent for the same power, by its stipulations with foreign governments, to deprive the States of the exclusive right to so legislate concerning the rights of alien residents as to protect the public health, morals, peace, and order of the States? Why, in other words, may not the same power, as in the case of the treaty with China, make its stipulations so broad as to cover every species of offense which may be perpetrated by the citizens of this Government against alien residents? If such may be done, if the powers of Congress may thus be extended, it no longer remains true that the Government of the United States is so constructed as that certain subjects of legislation are exclusively within the limits of State regulation; for, conceding such to be true, every subject of State legislation may, at the option of the Federal Government and without the consent of the States, be brought within the limits of Congressional power in so far as the same concerns the rights and interests of alien residents.

In the very nature of things, it must be held that no department of the general Government can stipulate away the legislative control which the States possess

ity of protection, and any law failing in this principle of equality is subjected to the supervisory and corrective power given to the Federal Government by the Fourteenth Article of Amendment, and by virtue of that amendment must be held nugatory and void. The protection thus extended to the Chinese resident, according to the theory of our Constitution, must be held to be ample, because it is all the protection which is extended to American citizens. In theory, at least, all protection is extended to an American citizen which is consistent with the nature of our Government, and that which is sufficient to protect one of our own subjects ought to satisfy an alien. It certainly cannot be true that the Chinese Government will demand from us, in the protection of its subjects residing here, a material variance from our ordinary methods of administering justice to our own subjects, or a change in the distribution of the powers of government which will materially interfere with the exercise by the States of such powers as have hitherto been conceded to them.

In the case of *New Orleans v. Armas et al., 9 Peters, 238*, this Court said:

"The inhabitants of Louisiana enjoy all the advantages of American citizens, in common with their brethren in their sister States, when their titles are decided by the tribunals of the State."

So in this case, the Chinese subjects residing in this country enjoy all the rights of citizens and other aliens, and those rights are protected in the tribunals and by the laws which protect and enforce the rights of citizens, and by none others.

Any doctrine other than that here advocated must necessarily result in an inequality of protection as between citizens and aliens, and hence must produce a viola-

tion of the spirit of the Fourteenth Article of Amendment. No doubt can be entertained but that it was the purpose of the Fourteenth Amendment to introduce as a fundamental principle, which should control the policy of the whole system of our laws, both State and National, that equality of protection which is forbidden to be violated by the States; and while that amendment is prohibitory to the States alone, its principles must be taken as constituting the basis of all legislation, and obligatory upon all the departments of the general as well as the State Government. The general Government would certainly refuse to violate such a principle which, by its Constitution, it enjoins upon the States.

If the doctrine contended for by the other side can be successfully maintained, it must result that, if citizens conspire to deprive a Chinese alien of the right to pursue a particular occupation, they may be prosecuted at the will of the Chinese resident in the State or Federal Courts; while it will not be contended that if Chinese residents conspire to prevent a citizen from pursuing a particular occupation they could be prosecuted in any Court other than those of the States. This would not be an equality of protection within the meaning of the Fourteenth Article of Amendment. It has been suggested, however, that this same difficulty exists in matters of a civil nature arising between citizens and aliens, but a moment's reflection will suffice to show that such is not the case. In matters of a civil nature jurisdiction exists in the Federal Courts because a party is an alien, and there is a mutuality of rights; either party to the controversy, whether he be the citizen or the alien, may prosecute the action in those Courts.

In the case under consideration that mutuality does

not exist; if the defendant's position is sustained, the rights of a Chinese resident receive protection against criminal violations by the laws of Congress and of the States, and by prosecution in the State or Federal Courts at his option, while the same rights in an American citizen receive protection against similar violations, even though they be perpetrated by Chinese residents, only by the laws of the States, and by prosecutions in the State Courts. No argument would seem necessary to establish that such a state of things was never contemplated by the Constitution, and that, if Congress has the power to provide against conspiracies framed and executed against the rights of aliens, it has the same power over the same subject-matter for the protection of the rights of citizens secured to them by the Federal Constitution.

It is argued, however, that the power of Congress to protect persons residing in this country under the security afforded by the treaty with China, is conferred by the last subdivision of Section 8, Article I, of the Constitution of the United States. That section provides that the Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

This general clause of the Constitution, it is said by Mr. Story:

"Neither enlarges any power specifically granted, nor is it a grant of any new power to Congress; but it is merely a declaration for the removal of all uncertainty that the means of carrying into execution those otherwise granted are included in the grant."

Story on the Constitution, Vol. II, Sec. 1243.

Nor is any force added to the argument by the second subdivision of Article VI of the Constitution which provides:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution and laws of any State to the contrary notwithstanding."

An Act of Congress to become a law of the United States must be made in pursuance of the Constitution; and a treaty, to become a part of the supreme law, must be in subordination to the Constitution, and its stipulations must be authorized by that instrument.

While it is true, in a general sense, that the rights of Chinese to that equal protection of the law, which is afforded by the Fourteenth Amendment to all persons arise primarily out of the treaty obligations of the Government, it is equally true that the rights of all other persons, including citizens, arise primarily in the Constitution, which, like the treaty, is part of the supreme law of the land. If, therefore, Congress, in the execution of the power conferred upon it, may provide for the punishment of unofficial and individual violations by citizens of this right to an equality of protection, because it is secured by treaties, made under the authority of the Constitution, it must be equally true that Congress may also provide for the punishment of like violations of the same right secured to citizens by the Constitution. The Constitution is, in every sense, the supreme law of the land, and a violation of a right secured by it, calls as loudly for the exercise of the powers of the general Government as any violation which could be made, by

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Supreme Court of the United States

OF AMERICA.

OCTOBER TERM, A. D. 1885.

No. .....

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Plaintiff in Error,

AND

J. C. FRANKS, MARSHAL OF THE UNITED STATES OF AMERICA FOR THE DISTRICT OF CALIFORNIA,

Defendant in Error.

Brief for Respondent

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Defendant in Error.

BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE.

The petitioner is in the custody of the United States Marshal for the District of California, under a warrant issued by a United States Commissioner, upon a

complaint charging him, Thomas Baldwin, and a number of other persons therein named, with a conspiracy to deprive certain Chinese residents of the town of Nicolaus, in the County of Sutter, State of California, who are not citizens of the United States, of their right to reside and pursue their lawful avocations in said town. Aforesaid complaint further charges that said Thomas Baldwin and his associates, having so conspired, and with the intent to drive these Chinese aliens from the County of Sutter, entered upon their homes, seized them forcibly, placed them on board a barge in Feather river, and expelled them from said county. Said complaint further charges that the pith and point of this conspiracy was to drive and expel these Chinese aliens from the County of Sutter, and deprive them of their right of residence which they had then acquired in the Town of Nicolaus, and deprive them of their right to there labor and to there earn a livelihood, and finally, to deprive them of all the rights guaranteed to them under the treaty between the United States and the Emperor of China, and thus defeat the operation of said treaty.

Thomas Baldwin sued out a writ of *habeas corpus* from the Circuit Court of the United States for the District of California, claiming that the complaint charged no offense cognizable under the laws of the United States; and after argument upon said writ, the Circuit Judge, Mr. Justice Sawyer, dismissed the writ and remanded the petitioner to the custody of the Marshal, but Mr. Justice Sabin, the District Judge, who heard the argument upon the return of said writ with the Circuit Judge, dissented from the views of

the Circuit Judge, and thereupon there was a certificate of opposition of opinion between the said two Judges upon the following questions, namely:

1. Whether the acts alleged in said petition and writ, for which the petitioner is held in custody, constitute an offense within the meainng of the provisions of Section 5519 of the Revised Statutes of the United States, supposing said section to be constitutional and valid, so far as it embraces the Chinese subjects residing in the United States and State of California, against whom the conspiracy is alleged to have been formed? (*Record*, folio 37).

2. Whether said section is constitutional and valid, so far as it embraces a conspiracy against subjects of the Chinese Empire residing in the United States and State of California, to deprive them of rights, immunities or privileges granted to them under and in pursuance of the several treaties between the United States and the Emperor of China? (*Record*, folio 37).

3. Whether, in view of the provisions of the Constitution of the United States, making the Constitution and laws and treaties made in pursuance thereof, the supreme law of the land; the provision empowering the President, with the advice and consent of the Senate, to make treaties, and the provision authorizing Congress to pass all laws necessary and proper for carrying into effect the foregoing powers, and all other powers vested by the constitution in the Government of the United States, or in any department or officer thereof; and in view of the provisions of the several treaties between the United States and the

Emperor of China, securing certain rights to Chinese subjects residing in the United States; the provisions of said Section 5519, so far as they embrace such Chinese subjects, making it an offense to conspire, directly or indirectly, to deprive such Chinese residents of the United States and of the State of California of any of the rights, immunities and privileges secured to them by virtue of said treaties and Constitution is constitutional and valid? (*Record*, folios 38, 39).

4. Whether the conspiracy of two or more persons in the State of California, for the purpose of depriving Chinese residents, lawfully residing in California, in pursuance of the provisions of the several treaties between the United States and the Emperor of China, of the right to live and pursue their lawful vocations at the town of Nicolaus, in said State, and in pursuance of such conspiracy, actually forcibly expelling such Chinese from said town, in the manner shown by the record is: 1. A violation of and an offense within the meaning of Section 5519 of the Revised Statutes of the United States. 2. Whether said section, so far as it applies to said state of facts and such Chinese residents and makes the acts stated an offense against the United States, is constitutional and valid? (*Record*, folios 39, 40).

5. Whether Section 5519, so far as it embraces the prohibited acts performed against Chinese subjects, lawfully residing within the United Stated and State of California, in pursuance of the provisions of the various treaties between the United States and China is constitutional and valid? (*Record*, folio 40).

6. Whether the Acts set out and described in the record constitute an offense, within the meaning of Section 5519 of the Revised Statutes of the United States, and if so, whether said section is constitutional and valid as to such offense? (*Record*, folio 40.)

7. Where two or more persons, with or without disguise, go upon the premises of Chinese subjects, lawfully residing in the State of California, with intent to prevent and hinder their free exercise or enjoyment of any right secured to them by the several treaties between the United States and the Emperor of China, and in pursuance of such conspiracy, forcibly prevent their exercise and enjoyment of such rights, and expel such Chinese subjects from the town in which they reside.

Whether, (1) Such acts so performed constitute an offense within the meaning of the provisions of Section 5508 of the Revised Statutes of the United Ssates? and

(2) If so, whether the provisions of said Section, so making said acts an offense, are constitutional and valid?

(3) Whether such acts so performed constitute an offense within the meaning of that clause of Section 5336 of the Revised Statutes of the United States, which makes it an offense for two or more persons in any State to conspire, "by force, to prevent, hinder or "delay the execution of any law of the United States," or within the meaning of any other clause of said section? and

(4) Whether said section, so far as applicable to

the facts stated, is a constitutional and valid law of the United States? (*Record*, folios 41, 42.)

8. Whether said acts, set out in said record, constitute an offense within the meaning of said Section 5336? or within the meaning of said Section 5508? (*Record*, folio 42).

9. Whether the acts set out in said petition, writ and return, and appearing in said record, constitute an offense against the United States, under any constitutional and valid law of the United States? (*Record* folio 42).

Rights of Chinese Aliens under the Treaties between the United States and the Emperor of China.

The States have surrendered the treaty-making power to the general government, and vested it in the President and Senate; and when duly exercised by the President and Senate, the treaty resulting is the supreme law of the land, to which, not only State laws, but State Constitutions, are, in express terms, subordinated.

It is the declared will of the people of the United States, that every treaty made by the authority of the United States shall be superior to the Constitution and laws of any individual state, and their will alone is to decide.

Ware, Adm'r of Jones vs. *Hylton*, 3 Dallas, 237.

"It is the declared duty of the State Judges to de-

" termine any constitution, or laws of any State, con-
" trary to that treaty (or any other) made under the
" authority of the United States, null and void. Na-
" tional or Federal Judges are bound by duty and oath
" to the same conduct."

In *Chirac* vs. *Chirac*, 2 Wheat., 259, it was held by this Court, that a treaty with France gave to the citizens of that country the right to purchase and hold land in the United States, and that it removed the incapacity of alienage and placed the parties in precisely the same situation as if they had been citizens of this country.

The same doctrine was reaffirmed, touching this treaty, in *Carneal* vs. *Banks*, 10 Wheat., 189; and with respect to the British treaty of 1794, in *Hughes* vs. *Edwards*, 9 Wheat., 489.

A treaty stipulation may be effectual to protect the land of an alien from forfeiture by escheat under the laws of a State. *Orr* vs. *Hodgson*, 4 Wheat., 453.

Hauenstein vs. *Lynham*, 100 U. S., 488. " It re-
" mains to consider the effect of the treaty thus con-
" strued upon the rights of the parties. That the
" laws of the State, irrespective of the treaty, would
" put the fund into her coffers, is no objection to the
" right or the remedy claimed by the plaintiffs in
" error. The efficacy of the treaty is declared and
" guaranteed by the Constitution of the United States."

And in the same case, 100 U. S., 490; this Court say: "It must always be borne in mind that the consti-

" tution, laws, and treaties of the United States are as " much a part of the law of every State as its own " local laws and constitution. This is a fundamental " principle in our system of complex national polity. " See; also, *Shanks* vs. *Dupont*, 3 Pet., 242; *Foster &* " *Elam* vs. *Neilson*, 2 *Id.*, 253; *The Cherokee Tobacco*, " 11 Wall., 616; Mr. Pinkney's Speech, 3 Elliott's " Constitutional Debates, 231; *The People, etc.*, vs. " *Gerke & Clark*, 5 Cal., 381. We have no doubt " that this treaty is within the treaty making power " conferred by the Constitution. And it is our duty " to give it full effect."

Our treaty relations with China extend over a period of more than forty years.

On July 3, 1844, a "treaty of peace, amity and commerce" was negotiated by Caleb Cushing, on behalf of the United States. (*Public Treaties, p. 116*).

By it, the citizens of this country were granted the right "to frequent" and "reside with their families, and trade" at the five ports of Kwang-chow, Amoy, Fuchow, Ningpo, and Shanghai.

On June 18, 1858, William B. Read negotiated another treaty, in which the government of China agreed to defend the citizens of the United States in China, "from all insult or injury of any kind." (*Public Treaties, p. 129, 131*).

To this there was a supplement, on November 8th of the same year.

On July 28, 1868, a treaty was negotiated by Wil-

liam H. Seward, containing sundry articles in addition to the last one.

By article V. of this treaty, "The United States of "America and the Emperor of China cordially recog- "nize the inherent and inalienable right of man to "change his home and allegiance, and also the mutual "advantage of the free migration and emigration of "their citizens and subjects respectively from the one "country to the other, for purposes of curiosity, of "trade, or as *permanent residents.*"

The high contracting parties, therefore, join in reprobating any other than an entirely voluntary emigration for these purposes.

Article VI provides: "Citizens of the United "States visiting or residing in China shall enjoy the "same privileges, immunities or exemptions in respect "to travel or residence as may there be enjoyed by "the citizens or subjects of the most favored nation; "and reciprocally, Chinese subjects visiting or residing "in the United States shall enjoy the same privileges, "and immunities and exemptions in respect to travel or "residence as may there be enjoyed by the citizens or "subjects of the most favored nation." (*Public Treaties, p. 148*).

On November 17, 1880, another treaty concerning "immigration" was negotiated. (*22 U. S. Stat. 826*).

Article I of this treaty gave the United States the right to "regulate, limit or suspend" but not to "absolutely prohibit," the coming to or residence of Chinese laborers in the United States, whenever it was

thought that their residence here was contrary to "the interests of the country," or endangered "the good order" thereof.

Article II provided, that Chinese and Chinese laborers then in the United States "shall be allowed to "go and come of their own free will and accord, and "shall be accorded all the rights, privileges, immuni- "ties and exemptions, which are accorded to the citi- "zens and subjects of the most favored nation." (*22 U. S. Statutes, p. 827*).

Under the concession contained in this treaty, Congress passed the Restriction Act of May 6, 1882, (*22 U. S. Stat., 58*), suspending the coming of Chinese laborers to this country, for the term of ten years from the expiration of ninety days after the date thereof.

The significance of the stipulation in the foregoing treaties with China, to the effect that the Chinese in this country shall be entitled to all the privileges and immunities that are "accorded to the citizens and subjects of the most favored nation" will be better understood by a reference to our treaty stipulations with Great Britain on that subject.

By Article I of the treaty of "commerce" with that country, of July 3, 1815 (*Public Treaties, p. 293*); renewed and continued in force by article 4 of the treaty of October 20, 1818; and further indefinitely continued by Article 1 of the treaty of August 6, 1827, it is provided: "The inhabitants of the two "countries, respectively, shall have liberty freely and

"securely to come with their ships and cargoes to all "such places, ports and rivers, in the territories afore- "said" (of the United States and Great Britain in Europe), "to which other foreigners are permitted to "come, to enter into the same, and to remain and re- "side in any parts of the said territories respectively." (*Public Treaties, 293*).

From this brief statement of the treaties bearing on the subject, it will be observed that any attempt to compel or constrain any Chinese resident of this country to remove from or to any particular place, or to refrain from following any lawful occupation, or doing any lawful work that he may find to do, is not only morally wrong, but contrary to the law of the land.

The words "privileges and immunities" used in the constitution in relation to rights of citizens of the different States, have been fully considered by the Supreme Court of the United States, and generally defined; and there can be no doubt that the definitions given are equally applicable to the same words as used in the treaty with China.

Corfield vs. *Coryell*, 4 Wash. Cir. Ct., 380, 381. "The inquiry is, what are the privileges and immuni- "ties of citizens in the several States? We feel no "hesitation in confining these expressions to those "privileges and immunities which are, in their nature, "*fundamental*, which belong, of right, to the citizens "of all free governments; and which have, at all "times, been enjoyed by the citizens of the several

"States which compose this union, from the time of "their becoming free, independent and sovereign. "What these fundamental principles are, it would, per- "haps, be more tedious than difficult to enumerate. "They may, however, be all comprehended under the "following general heads: protection by the govern- "ment; the enjoyment of life and liberty, with the "right to acquire and possess property of every kind, "and to pursue and obtain happiness and safety; sub- "ject, nevertheless, to such restraints as the govern- "ment may justly prescribe for the general good of "the whole. The right of a citizen of one State to "pass through, or to reside in any other State, for "purposes of trade, agriculture, professional pursuits, "or otherwise; to claim the benefit of the writ of "*habeas corpus*; to institute and maintain actions of "any kind in the Courts of the State; to take, hold "and dispose of property, either real or personal; and "an exemption from higher taxes or impositions than "are paid by the other citizens of the State, may be "mentioned as some of the particular privileges and "immunities of citizens, which are clearly embraced "by the general description of privileges deemed "to be fundamental; to which may be added the "elective franchise as regulated and established by "the laws or constitution of the State in which it is to "be exercised."

These doctrines thus enunciated by Mr. Justice Washington, were approved by this Court in *Ward* vs. *Maryland*, 12 Wall., 430; also, in *Slaughter House Cases*, 16 Wall.. 76.

See also:

Holden vs. *Joy*, *17 Wall. 242, 243.*
U. S. vs. *43 Gallons Whisky*, *93 U. S., 196, 198.*

The rights of Chinese aliens under the treaties between the United States and the Emperor of China, are elaborately discussed and upheld, both by reason and authority in the opinions of Mr. Justice Sawyer and Mr. Justice Hoffman in *Parrott's Chinese Case*, 6 Sawyer, 351 to 389.

The provisions of the Revised Statutes of the United States which apply to this case.

We submit that there are three sections of the Revised Statutes of the United States, under each of which the offense charged in the complaint may be brought. These Sections are: 5508, 5519, and 5336. The complaint is manifestly based upon Section 5519. but we submit that its allegations satisfy the provisions both of Section 5508 and Section 5336.

Revised Statutes of the United States, Sec. 5508: "If two or more persons conspire to injure, oppress, "threaten or intimidate any citizen in the free exer- "cise or enjoyment of any right or privilege secured "to him by the Constitution or laws of the United "States, or because of his having so exercised the "same; or if two or more persons go in disguise on "the highway, or on the premises of another, with

" intent to prevent or hinder the free exercise or en-
" joyment of any right or privilege so secured, they
" shall be fined not more than five thousand dollars,
" and imprisoned not more than ten years; and shall,
" moreover, be thereafter ineligible to any office, or
" place of honor, profit, or trust created by the Consti-
" tution or laws of the United States."

Revised Statutes of the United States, Sec. 5519:

"If two or more persons in any state or territory con-
" spire, or go in disguise on the highway or on the
" premises of another, for the purpose of depriving,
" either directly or indirectly, any person or class of
" persons of the equal protection of the laws, or of
" equal privileges and immunities under the laws; or
" for the purpose of preventing or hindering the con-
" stituted authorities of any State or Territory from
" giving or securing to all persons within such State or
" Territory the equal protection of the laws; each of
" such persons shall be punished by a fine of not less
" than five hundred nor more than five thousand dol-
" lars, or by imprisonment with or without hard labor,
" not less than six months nor more than six years, or
" by both such fine and imprisonment."

Revised Statutes of the United States, Sec. 5336.

" If two or more persons in any State or Territory,
" conspire to overthrow, put down, or to destroy by
" force the government of the United States, or to
" levy war against them, or to oppose by force the
" authority thereof; or by force to prevent, hinder,
" or delay the execution of any law of the United
" States; or by force to seize, take, or possess any

" property of the United States contrary to the au-
" thority thereof; each of them shall be punished by a
" fine of not less than five hundred dollars, and not more
" than five thousand dollars; or by imprisonment, with
" or without hard labor, for a period not less than six
" months, nor more than six years, or by both such fine
" and imprisonment."

The complaint in this case satisfies the following portion of aforesaid section 5508: " If two or more " persons conspire to injure, oppress, threaten or in- " timidate any citizen in the free exercise or enjoyment " of any right or privilege secured to him by the Con- " stitution or laws of the United States, or because of " his having so exercised the same, or if two or more " persons go * * * on the premises of another, " with intent to prevent or hinder his free exercise or " enjoyment of any right or privilege so secured, they " shall be fined," etc.

The complaint does not follow the language of the Statute by charging that Thomas Baldwin and his co-conspirators went on the premises of the Chinese aliens in question, but it uses language which substantially involves that charge, for it alleges: " That " the crime of conspiracy was committed by more than " two persons, who conspired together for the purpose " of depriving a class of persons then being subjects of " the Emperor of China, to-wit, Chinese aliens, belong- " ing to said class, of the equal protection of the laws, " and of equal privileges and immunities under the " laws, that is to say: " That heretofore, to-wit, on or " about the 17th day of February, A. D., 1886, within

" the jurisdiction of the United States aforesaid, and " of this Honorable Court, to-wit, at the town of Ni- " colaus, in the County of Sutter, in the State of Cali- " fornia, Charles Wessing, Edward Wessing, H. Wes- " sing, Thomas Thornton, Alfred Wagner, Mathew " Mutchler, David Redfield, Daniel McCarty, George " Scott, Charles Engasser, Frank Valley, and one Elliot, " whose christian name is unknown to affiant and " Thomas Baldwin, Bird Wilson, William Hays and " one McElroy, whose christian name is unknown, " and divers other persons, to said affiant unknown, " did conspire together for the purpose of depriving " the following persons, to-wit: Sing Lee, John Lee, " Hee Look, Lun Mow, Ching Hung, Chun Gong, " Lee Yung, Gim Nun, Len Woon, Lum Gunng, " Luey Luey, You Mouy, Fung Fat, Yuck Yow, Hen " Ain, and Fuey Hang, belonging to said class of Chi- " nese aliens, being then and there subjects of the " Emperor of China, of the equal protection of the laws, " and of equal privileges and immunities under the " laws, for that said last named persons, so belonging " to the class of Chinese aliens, did then and there " reside at the town of Nicolaus, in said County of " Sutter, in said State of California, and were engaged " in legitimate business and labor to earn a living, as " they had a right to do; and they at that time had " a right to reside at said town of Nicolaus, in said " County of Sutter, in said State of California, and " engage in legitimate business and labor to earn a " living, under and by virtue of the treaties existing, " and which did then exist, between the Government " of the United States and the Emperor of China,

" and the Constitution and laws of the United States;
" but nevertheless, while said last named persons
" were then and there so residing and pursuing their
" legitimate business and labor, for the purpose afore-
" said, said conspirators, to-wit: Charles Wessing,
" Edward Wessing, H. Wessing, Thomas Thornton,
" Alfred Wagner, Mathew Mutchler, David Redfield,
" Daniel McCarty, George Scott, Charles Engasser,
" Frank Valley, and one Elliot, whose christian name
" is unknown to affiant, and Thomas Baldwin, Bird
" Wilson, William Hays, and one McElroy, whose
" christian name is unknown, and divers other persons
" to said affiant unknown, did then and there, hav-
" ing conspired together for purpose unlawfully, and
" with force and arms, violently and with intimida-
" tion, drive and expel said persons, hereinbefore
" named, belonging to said class of Chinese and be-
" ing subjects of the Emperor, from their residence at
" said town of Nicolaus, in said county of Sutter, and
" State of California, and did then and there deprive
" them, said Chinese aliens, who were then subjects
" of the Emperor of China, of the privilege of con-
" ducting their legitimate business and of the privi-
" lege of laboring to earn a living, and without any
" legal process, the defendants placed said Chinese
" aliens, the subjects of the Emperor of China, under
" unlawful restraint and arrest, and so detained them
" for several hours, and then and there by force and
" arms, and with violence and intimidation, placed
" them, said Chinese aliens, the subjects of the Em-
" peror of China, upon a steamboat barge, then plying
" on the Feather river, and drove them from their res-

" idence and labor, and from said county, whereby said " defendants, said conspirators, deprived said Chinese " aliens, the subjects of the Emperor of China, of the " equal protection of the laws, and of equal privileges " and immunities under the laws, contrary to the " form of the Statutes of the United States of America " in such cases made and provided, and against the " peace and dignity of the United States." (*Record*, folios 22 to 26.)

This Section, 5508, has been pronounced constitutional by this Court in *ex parte Yarbrough, 110 U. S. 651; U. S.* vs. *Waddell, 112 U. S., 76.*

If this complaint, therefore, satisfies the requirements of said Section 5508, there is an end of appellant's case.

Section 5336:

As to said Section, 5336, Mr. Justice Deady, in a recent charge to the United States Grand Jury, in the United States District Court for the District of Oregon, said:

" Lawless and irresponsible associations of persons " are forming all over the country, claiming the right " to impose their opinions upon others, and to dictate " for whom they shall work, whom they shall hire, " from whom they shall buy and to whom they shall " sell, and for what price or compensation. In these " associations the most audacious and unscrupulous " naturally come to the front, and for the time being " control their conduct. Freedom, law and order, are

" so far subverted, and a tyranny is set up in our " midst most gross and galling. Nothing like it has " afflicted the world since the middle ages, when the " lawless barons and their brutal followers desolated " Europe with their private wars and predatory raids, " until the husbandman was driven from his ravaged " field, and the artizan from his pillaged shop, and " the fair land became a waste. * * * Lately, " this spirit has been manifesting itself in Oregon, by " assaulting, robbing and driving out the helpless " Chinese, who are engaged among us at lawful labor " for an honest living. The excuse given for this " conduct is that the Chinese are taking the bread out " of the mouths of their assailants by working " for less wages and living cheaper than the latter " can. In other words, they complain of the in- " dustry and economy of the Chinese as being be- " yond their competition. As we all know, this " statement must be taken with much allowance. " True, the Chinaman is industrious and econom- " ical, and he has the advantage of being tem- " perate and faithful to his engagements; but he de- " mands and gets better wages here than white- " men in any other part of the world, and, save in the " matter of whisky and tobacco, he lives as well and " is as well clad as the bulk of common laborers any- " where. * * * The Chinese now in this country " are here under the sanction of a solemn treaty with " the United States, and any attempt on the part of " individuals, acting singly or in numbers, to expel " them by any threat, menace, violence or ill usage, is " not only wrong but unlawful. * * * It is com-

" monly known that during the past few weeks, gangs " of masked men have, in the night time entered the " houses and camps of peaceful Chinese residents " engaged in useful labor at various points in this " vicinity, and by serious intimidation and threats of " personal violence, have compelled them to leave " their homes and work and come to Portland. There " is no doubt but that this brutal and inhuman con- " duct is a gross violation of the rights guaranteed to " these people by the national government through " the treaties aforesaid, nor is there any doubt of the " power of Congress to provide for the punishment of " any person who injures, annoys, or disturbs any sub- " ject of a foreign government, resident in any part " of the United States, contrary to the treaty stipula- " tions with such government. The powers of the " national government, though limited in number and " subject, are supreme in their sphere. A treaty with " a foreign power is the supreme law of the land; " and Congress may provide a punishment for its in- " fraction or the deprivation of, or injury to a right " secured by it, as in the case of an ordinary law. " Without this power, the national government would " be unable to keep faith with other nations. In all " our external relations the individual States are un- " known. The government of the Union, or United " States, stands for all, and in this respect may enforce " obedience to its authority by the prosecution and " punishment of individuals who act contrary thereto.

" The next question is, has Congress passed any " law for the punishment of persons who, contrary to

" the treaty stipulations, molest the subjects of for-
" eign powers resident in this country. * * *

" Section 5336 of the Revised Statutes, which is
" also carved out of Section 2 of the Act of April
" 20, 1871, (17 Statutes, 13) to enforce the Four-
" teenth Amendment 'and for other purposes,' pro-
" vides that" (here the Judge quotes section 5336, and italicizes the following language of that Section):
" *or by force to prevent, hinder, or delay the execution*
" *of any law of the United States.* * * * *
" This Section has nothing to do with the Fourteenth
" Amendment, and there is no doubt of its consti-
" tutionality. It was copied into the Act of 1871,
" aforesaid, from the Act of July 31, 1861, (12 Stat-
" utes, 284), to 'define and punish certain conspiracies'
" against the United States, of a seditious or treas-
" onable character. And the only question now is,
" does it include the acts or conduct under consider-
" ation? Speaking only for this occasion, and reserv-
" ing my final judgment until I may hear the matter
" fully argued, I think it does. The attempt to drive
" the Chinese out of the country or to maltreat or
" intimidate them with a view of constraining them to
" depart is *prima facie* an attempt to prevent and hin-
" der the execution, operation, or fulfillment of a law
" of the United States, namely, the treaties with
" China of 1868 and 1880. And a conspiracy or
" agreement of two or more persons to engage
" in such conduct, may for that reason be well
" characterized as a seditious and treasonable con-
" spiracy against the authority and laws of the United
" States. A mere assault, or even robbery, committed

" on a Chinaman, without any ulterior purpose, other " than a desire to vex and annoy, or to steal, may not " be a violation of this section . *Prima facie*, such con- " duct is not intended to prevent the execution or " operation of the law of the United States giving the " Chinese the right to reside here indefinitely, but " when, as I have said, the purpose of the conduct is " to expel the Chinese from the country, either by di- " rect deportation, or such intimidation or violence as " is likely to constrain them to go, I instruct you, that " the case comes within that clause in the Section " which makes it a crime '*by force to prevent, hinder* " '*or delay the execution of any law of the United* " '*States.*' Some cases will be submitted to you by " the District Attorney, of persons charged with mob- " bing and driving Chinese in this vicinity, who have " been held to answer therefor before you. Take " these cases and examine them carefully, and if you " find that any of the parties have maltreated, men- " aced, or intimidated Chinese for the purpose, or with " the intent, to compel or constrain them to leave the " country, or to remove from any place therein, it will " be your duty to present them to the Court for trial."

The language of the complaint brings this case within the provisions of said Section, 5336, and *the intent* of the conspiracy, and of all the overt acts committed by Baldwin and his associates, in the execution of said conspiracy, is distinctly charged to be, to drive these Chinese aliens from their homes and occupations, and to defeat the operation of the treaty between the United States and China.

This case is not obnoxious to the several cases in which this Court has decided that certain provisions of the United States Statutes were merely intended to prohibit State action, and had no reference to the conduct of individuals.

The language of said Section 5336, is distinctly pointed at individual acts of misconduct: "If two "or more persons, in any State or Territory, con- "spire to overthrow," etc.

Neither is this case within the operation of those decisions of this Court which hold that the complaint is insufficient in failing to show that the crime charged is violative of some federal right possessed by the injured party. Here the allegations of the complaint are clear and distinct, that the whole object of the conspiracy charged, and of all the overt acts committed in pursuance thereof, was to drive and expel the Chinese aliens in question from their homes, from the County of Sutter, from their right of residence in the Town of Nicolaus, from their right of labor in said town where they then lived, from their right to there earn a livelihood at their respective lawful vocations as theretofore.

The distinction which runs through the cases decided by this Court is, that the complaint to bring the offense within federal jurisdiction must clearly show, not merely that the offenders have committed a crime, but that the crime has been committed with the manifest intent of defeating a federal right possessed by the injured party; that where the State interferes with rights of individuals, guaranteed to them by the

Constitution or laws or treaties of the United States, that then such State action comes within the prohibition of the Acts of Congress, provided Congress has taken appropriate action in the premises. And so, also, where Congress has made it an offense to violate certain rights of individuals, that where such individual rights are violated, and such rights are federal in their character, that is, rights guaranteed to the injured individuals by the Constitution, or laws, or treaties of the United States, that then they constitute federal offenses within the appropriate action of Congress, and within the jurisdiction of the Federal tribunals.

These doctrines are clearly stated in:

United States vs. *Reese*, 92 U. S., 217.
United States vs. *Cruickshank*, 92 U. S., 548.
U. S. vs. *Harris*, 106 U. S., 636 to 640.
Yarbrough's Case, 110 U. S., 657 to 666.
U. S. vs. *Waddell*, 112 U. S., 79.

Section 5519.

As to Section 5519, upon which the complaint appears to have been specially based, there can be no doubt that the acts charged are within the provisions of this section. But it is contended, that this section, 5519, has been held unconstitutional by this Court in *U. S.* vs. *Harris*, 106 U. S., 629. The Harris case was entirely unlike this. The indictment there charged the defendants with conspiring to deprive citizens of the United States, and of the State of Tennessee, of the equal protection *of the laws of the State;* while the complaint in this case charges Baldwin and

his associates with conspiring for the purpose of depriving Chinese aliens, subjects of the Emperor of China, of a right secured by the treaty of the United States with China. In the Harris case, the Government relied upon Sec. 2, Art. 4, and the 13th, 14th and 15th Amendments of the United States Constitution, as authorizing the enactment of this section, 5519. But not so in this case; here it is conceded that unless there is a grant of power to Congress to pass the Act in question, to be found in the Constitution, the power does not exist. The provisions of the United States Constitution which confer the power upon Congress are the following:

Sec. 2, Art. 2, of the United States Constitution, defining the powers of the President, provides: "He "shall have power, by and with the advice and con- "sent of the Senate, to make treaties, provided two- "thirds of the senators present concur."

Sec. 2, Art. 3, of the United States Constitution provides: "The judicial power shall extend to all "cases, in law and equity, arising under this Constitu- "tion, the laws of the United States, and treaties "made, or which shall be made, under their authority."

Sec. 8, Art. 1, of the United States Constitution confers power upon Congress "to regulate commerce "with foreign nations," which is incidental to the treaty-making power.

Sec. 10, Art. 1, of the United States Constitution provides: "No state shall enter into any treaty, alli- "ance or confederation."

Sec. 8, Art. 1, of the United States Constitution,

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which defines the power of Congress, provides that Congress shall have power "to define and punish "piracies and felonies committed on the high seas, *and* "*offenses against the law of nations*;" and the concluding paragraph of that section reads: "to make all "laws which shall be necessary and proper for carrying into execution the foregoing powers, and all "other powers vested by this Constitution in the "Government of the United States, or in any department or officer thereof."

Article 6, of the United States Constitution, provides: "This Constitution and the laws of the United "States which shall be made in pursuance thereof; "and all treaties made, or which shall be made, under "the authority of the United States, shall be the supreme law of the land."

The power to make treaties is an attribute of sovereignty possessed by all nations, to be exercised in their intercourse with each other, and it is only limited by the law of nations. This sovereign power was relinquished by the several States and granted to the Government of the United States by the Constitution, and the judicial power of its courts was extended to all cases in law and equity arising under treaties made by the Government. The treaty-making power is as broad as the necessities of national intercourse, and Chancellor Kent, in his Commentaries, says:

"The department of the government that is entrusted by the Constitution with the treaty-making "power, is competent to bind the national faith in its

"*discretion*; for the power to make treaties of peace "must be co-extensive with all the exigencies of the "nation, and necessarily involves in it that portion of "the national sovereignity which has the exclusive "direction of diplomatic negotiations and contracts "with foreign powers. All treaties made by that "power become of absolute efficacy, because they "are the supreme law of the land." *1 Kent's Com., p. 166*).

Considering and construing all the provisions of the United States Constitution, which we have quoted *in pari materia*, it results, that Congress had power to enact a law denouncing a penalty against persons who conspire to deprive aliens of a right of residence. That right is guaranteed by treaty, and by Section 5519 of the Revised Statutes of the United States, which provides for the punishment of such offenders.

We have seen from Section 8, Art. 1, of the United States Constitution, that Congress has power "to de-"fine and punish * * * offenses against the "laws of nations." A treaty is a law of nations, a public law of the United States, and a violation of the treaty is an offense against the law of nations.

To illustrate this point, I quote from *1 Kent's Com., p. 182, Lecture IX.*

"*Offenses against the Law of Nations.*

"The violation of a treaty of peace, or other na-"tional compact, is a violation of the law of nations,

"for it is a breach of public faith. Nor is it to be "understood that the law of nations is a code of mere "elementary speculation, without any efficient sanction. "It has a real and propitious influence on the fortunes "of the human race. It is a code of present, active, "durable and binding obligation. As its great funda- "mental principles are founded in the maxims of eter- "nal truth, in the immutable law of moral obligation, "and in the suggestions of an enlightened public in- "terest, they maintain a steady influence, notwithstand- "ing the occasional violence by which that influence "may be disturbed. The law of nations is placed un- "der the protection of public opinion. It is enforced by "the censures of the press, and by the moral influen- "ces of those great masters of public law, who are "consulted by all nations as oracles of wisdom, and "who have attained, by the mere force of written rea- "son, the majestic character, and almost the "authority, of universal law givers, controlling "by their writings the conduct of rulers, and lay- "ing down precepts for the government of mankind. "No nation can violate public law, without being sub- "jected to the penal consequence of reproach and "disgrace, and without incurring the hazard of pun- "ishment, to be inflicted in open and solemn war by "the injured party. *The law of nations is likewise "enforced by the sanctions of municipal law.* It is, "says Blackstone, 'adopted in its full extent by the "'common law of England; and whenever any "'question arises which is properly the subject of its "'jurisdiction, it is held to be a part of the law of the "'land.'"

The circumstance that the offense named was committed within the territory of the State of California does not deprive the Federal Court of jurisdiction, nor Congress of the power "to define and punish" the offense.

U. S. vs. *Holliday*, 3 Wall, 407.
U. S. vs. 43 *Gallons Whisky*, 93 U. S., 188.
Ex parte Yarbrough, 110, U. S., 651.
U. S. vs. *Waddell*, 112 U. S., 76.

As to the scope of the treaty-making power, we refer to

Holmes vs. *Jennison*, 14 Pet., 561.
Hauenstein vs. *Lynham*, 100 U. S., 483.

The Government of the United States, and not the State of California is responsible for the damages sustained by the Chinese aliens in question.

Chy Lung vs. *Freeman*, 92 U. S., 275.

The question in this case could not have been involved in *U. S.* vs. *Harris*. In that case, the law alleged to have been violated was a law of the State; but here the law alleged to have been violated is a law of the United States;—a treaty, which is the supreme law of the land. Upon well settled principles, the Harris case must be limited as authority to the point necessarily decided.

The true rule is stated in *Cohens* vs. *Virginia*, 6 Wheat., 399, where Chief Justice Marshall said:

"It is a maxim not to be disregarded, that general "expressions, in every opinion, are to be taken in "connection with the case in which those expressions "are used. If they go beyond the case, they may be "respected, but ought not to control the judgment in a "subsequent suit when the very point is presented for "decision. The reason of this maxim is obvious. "The question actually before the Court is investi- "gated with care, and considered in its full extent. "Other principles which may serve to illustrate it, "are considered in their relation to the case decided, but "their possible bearing on all other cases is seldom "completely investigated."

The same doctrine is re-asserted in *Carroll* vs. *Carroll*, 16 Howard, 287.

So far as anything appears to the contrary, in the Harris Case, the conspirators and the persons conspired against were white citizens of the State of Tennessee. Therefore, the Court said: "A law under "which two or more free white private citizens could "be punished for conspiring, or going in disguise, for "the purpose of depriving another free white citizen "of a right accorded by the *law of the State* to all "classes of persons—as, for instance, the right to "make a contract, bring a suit, or give evidence— "clearly cannot be authorized by the amendment "which simply prohibits slavery, and involuntary "servitude."

U. S. vs. *Harris*, *106 U. S.*, *641*.

When this Court said, in the Harris Case: "Those "provisions of the law" (referring to Section 5519), "which are broader than is warranted by the Article "of the Constitution by which they are supposed to "be authorized, cannot be sustained," (106, U. S., 641); it went further than was necessary to a decision of the case then in hand, and what the Court then said ought to be regarded as *obiter dictum.*

The maxim, *utile per inutile non vitiatur* is of frequent application to the construction of statutes, or as it may otherwise be expressed, a statute may be constitutional for one purpose and unconstitutional for another. The principle for which we contend is well expressed in the concluding portion of the decision of this Court in *Packet Company* vs. *Keokuk*, 95 U. S., 89:

"The ordinance of Keokuk has imposed no charge "upon these plaintiffs, which it was beyond the power "of the City to impose. To the extent to which "they are affected by it, there is no valid objection to "it. Statutes that are constitutional, in part only, "will be upheld so far as they are not in conflict with "the Constitution, provided the allowed and prohibited "parts are severable. We think a severance is pos-"sible in this case. *It may be conceded the ordinance "is too broad, and that some of its provisions are un-"warranted. When those provisions are attempted to "be enforced, a different question may be presented.*"

There is no difficulty in applying Section 5519 of the Revised Statutes to conspirators who conspire to deprive Chinese aliens, subjects of the Emperor of

China, or aliens of other nationalities, who are in the United States, under treaty sanction, or the protection of the laws and treaties of the United States, while the section may be regarded as invalid for the purpose of punishing conspirators to deprive citizens of rights secured by State law.

It is evident, from the context of the several provisions of the Revised Statutes of the United States defining conspiracies, that Congress had in view conspiracies to deprive persons of rights secured by the Constitution, laws and treaties of the United States, and not rights secured by the laws of the States. The States have exclusive jurisdiction to define and punish offenses against their own laws, but the Government of the United States has jurisdiction to punish offenses against its laws, and not the laws of the States, and it should be presumed that Congress, in the enactment of Section 5519, only intended to denounce a punishment against conspiracies, to deprive classes of persons, or persons, of the privileges and immunities under the laws of the United States.

The principle that a Statute may be regarded as constitutional for one purpose and not for another, or in other words, constitutional in part and unconstitutional in part, is decided in the following cases:

Tiernan vs. *Rinker*, 102 U. S., 123.
People vs. *Hill*, 7 Cal., 104.
State of Oregon vs. *Wiley*, 4 Oregon, 187.
Mundy vs. *Monroe*, 1 Mich., 68.
Cargill vs. *Power*, 1 Mich., 369.
Baker vs. *Braman*, 6 Hill, 47.

Cooley in his work on *Constitutional Limitations* (4th ed.), 178, (top paging 215), says:

"The constiutional and unconstitutional provisions "may even be contained in the same section, "and yet be perfectly distinct and separable, so that "the first may stand though the last fall. The point "is not whether they are contained in the same sec- "tion; for the distribution into sections is purely "artificial; but whether they are essentially and insep- "erably connected in substance. If, when the uncon- "stitutional portion is stricken out, that which remains "is complete in itself, and capable of being executed "in accordance with the apparent legislative intent, "wholly independent of that which was rejected, it must "be sustained. The difficulty is in determining "whether the good and bad parts of the statute are "capable of being separated within the meaning of "this rule. *If a statute attempts to accomplish two or "more objects, and is void as to one, it may still be in "every respect complete and valid as to the other.*

In the same work (4th ed.), 180, (top paging 218), Cooley says:

"A legislative act may be entirely valid as to "some classes of cases, and clearly void as to others. "A general law for the punishment of offenses, which "should endeavor to reach, by its retroactive opera- "tion, acts before committed, as well as to prescribe a "rule of conduct for the citizen in the future, would "be void so far as it was retrospective. But such in- "validity would not affect the operation of the law in